# A

# DIGEST

## OF THE

# LAWS of ENGLAND.

---

By the Right Honourable

**Sir JOHN COMYNS, Knight;**

Late Lord Chief Baron of His Majesty's Court of Exchequer.

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## VOL. III.

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MVSEVM
BRITANNICVM

# EXPLANATIONS.

## A.

| | |
|---|---|
| *Abr. Ca.* | Abridgment of Cafes in Equity. |
| *Acc.* or *Ag.* or *Agr.* | Accord, or, Agrees. |
| *Adj.* | Adjudged: Sometimes, Adjourned. |
| *Adm.* | Admitted. |
| *Ante* and *Poſt.* | References to Diviſions and Subdiviſions of the ſame Title. |
| *Arg. 1 Ch. R.* | Argument in 1 Chancery Reports on the Juriſdiction of the Chancery. |
| *Aſſ.* | Liber Aſſiſarum. The References by Placita. |
| *Aſt. Ent.* | Aſton's Entries. |
| *Ayl. Int.* | Ayliffe's Introduction to his Parergon. Edit. 1726. |

## B.

| | |
|---|---|
| *B.* or *C. B.* | Common Bench, or Common Pleas. |
| *B. R.* | King's Bench. |
| *B. Tr.* | Biſhop's Trial. |
| *Bend.* | Benloe's Reports; Sometimes referred to by *Placitum*, ſometimes by *Page*; when the former, it has *pl.* before the Figure. |
| *Bl.* | Blount's Law Dictionary. |
| *Bo. R. Act.* | Booth of Real Actions. |
| *Br. Jud.* | Brownlow's Brevia Judicialia. Edit. 1662. |
| *Bro.* | Brooke's Abridgment. |
| *Bro. Ent.* or *Brow. Ent.* | Brown's Entries. |
| *Bro. R.* | Brownlow Redivivus. |
| *Bro. V. M.* | Brown's Vade Mecum. |
| *Brownl.* or 1 & 2 *Brow.* | Brownlow's Reports. |
| *Brownl. Ent.* | Brownlow's Entries. |

## C.

| | |
|---|---|
| *C. B.* | Common Bench, or Common Pleas. |
| *Ca. Ch.* | Cafes in Chancery. Edit. 1735. |
| 3 *Ca. Ch.* | 3d Vol. of Cafes in Chancery, or, Select Cafes in Chancery: Contains the *D. of Nurf.* Cafe. |
| *Ca. Eq.* | Gilbert's Reports of Cafes in Equity. |
| *Cal.* | Callis on Sewers. 4to. 1686. |

| | |
|---|---|
| *Ca. P.* or *Ca. Parl.* | Caſes in Parliament. |
| *Cart.* | Carter's Reports. |
| *Carth.* | Carthew's Reports. |
| *Chil.* | Chillingworth. |
| 1, 2, & 3 *Ch. R.* | Reports of Caſes in Chancery in the Reigns of *K. Charles* 1*ſt*, *&c.* examined with the 3d Edit. *Folio* 1736, by the Pages of the *Octavo* Edit. which are there preſerved in the Margin. [Note, 1 *Ch. R.* contains the *Earl of Oxford*'s Caſe, and the *Argument on the Juriſdiction of the Chancery*, which laſt is deſcribed by *Arg.* 1 *Ch. R.*] |
| *Ch. R.* without a preceding Figure. | Chancery Reports *tempore* Finch. |
| *Cl. Aſſ.* | Clerk's Aſſiſtant. |
| *Clift.* | Clift's Entries. |
| *Cod.* or *Cod. Ju. Eccl.* | Gibſon's Codex. |
| *Compl. Att.* or *C. Att.* | Compleat Attorny. 1ſt Edition 1676. |
| *Conſt. Oth.* | Conſtitutiones Othoni at the End of Lyndwood's Provinciale. |
| *Cont.* | Contra. |
| *Crompt. Off. of Sheriff.* / *Crompt.* or *Crompt. Juſt.* | Fitzherbert's Offices of Juſtices of Peace, *&c.* enlarged by Richard Crompton. |

## D.

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|---|---|
| *D.* | Dictum.—Sometimes a Letter of Reference to a Book. |
| *D. of Norf.* | Duke of Norfolk's Caſe in 3 Caſes in Chancery, or, Select Caſes in Chancery. |
| *D. of Pl.* or *D. of Pluralities.* | A Defence of Pluralities. 8vo. 1692. |
| *Dal.* | Dalliſon's Reports. |
| *Dalt.* | Dalton's Juſtice. |
| *Dalt. Sh.* | Dalton's Office of Sheriff. |
| *Dan.* | Danvers's Abridgment. |
| *Degs.* | Degge's Parſon's Councellor. Edit. 1703. |
| *Dod. Nob.* | Honours Pedigree or the ſeveral Fountains of Gentry, &c. by Sir John Doderidge. 1657. |
| *Dub.* | Dubitatur. |
| *Dugd. Or. J.* or *Jud.* | Dugdale's Origines Juridiciales. |
| *Dugd. Sum.* | Dugdale's Summons to Parliament. |
| *Duke.* | Duke's Law of Charitable Uſes. |
| *Dy.* | Dyer's Reports. Edit. 1688. |

## E.

| | |
|---|---|
| *Eq. Ab.* or *Eq. Abr.* or *Eq. Ca. Ab.* | Abridgment of Caſes in Equity. |
| *Eq. Ca.* or *Eq. R.* | Gilbert's Reports of Caſes in Equity, 2d Edition. |

*Eq. Ca.*

| | |
|---|---|
| *Eq. Ca.* | Sometimes Gilbert's as above.—Sometimes the Second or Equity Part of 2 *Mod. Ca.* (Modern Cases in Law and Equity;) but when the latter is meant, it is markt in the Margin. |
| *E. of Cov.* | Earl of Coventry's Case at the End of Francis's Maxims of Equity. |
| *E. of Oxford.* | Earl of Oxford's Case, 1 *Ch. R.* |

F.

| | |
|---|---|
| *F. N. B.* | Fitzherbert's Natura Brevium. The Pages according to the old Editions. |
| *F,g.* or *Fitzg.* | Fitz-Gibbon's Reports. |
| *Fl.* | Fleta. |
| *Finch Ch. R.* | Chancery Reports *tempore* Finch. |
| *Fitz.* or *F.* | Fitzherbert's Abridgment. |
| *Fox. M.* | Fox's Martyrology. |
| *Fran.* or *Fra.* | Francis's Maxims of Equity. |
| *Fra. E. of Cov.* | Earl of Goventry's Case at the End of Francis's Maxims of Equity. |

G.

| | |
|---|---|
| *G.* 2. with a Figure preceding, or, *Temp. G.* 2. | Reports of Cases in Chancery and the King's Bench in the 4th, 5th, 6th and 7th Years of *K. Geo.* 2d. |
| *Gilb.* | Godbolt's Reports. |
| *Gil.* | Gouldsborough's Reports. |
| *Gro. de j. b. & p.* | Grotius de Jure Belli & Pacis. |

H.

| | |
|---|---|
| *H. P. C.* or *H.* | Hale's Pleas of the Crown. 8vo. |
| *Han. Ent.* | Hanfard's Entries. |
| *Hanf^s. Introd.* or *Int.* | Hanfard's Introduction to his Book of Entries. |
| *Hard.* | Hardres. |
| *Hift. de C. L.* | Hale's Hiftory of the Common Law. |

J.

| | |
|---|---|
| *Jan. Angl.* | Jani Anglorum Facies nova. |
| *Jen. (S. L.)* | Sir Leoline Jenkins. (The References are to his Argument on the Jurifdiction of the Admiralty, and his Charges at the Admiralty Seffions.) |
| *Jenk.* | Jenkins's Centuries. |
| *Infra* and *Supra.* | References to the fame Divifion or Subdivifion. |
| *Jon.* | Sir William Jones's Reports. |
| *2 Jon.* | Sir Thomas Jones's Reports. |

K.

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|---|---|
| *Kel.* or *Keil.* | Keilwey's Reports. |
| *Kelk.* | Kelynge's Reports. |
| *Ken. Imp.* | Kennet of Impropriations. |
| *Kit.* | Kitchin of Courts. French Edition 1623. |

L.

| | |
|---|---|
| *Lamb.* | Lambard's Juſtice. |
| *Lamb. Ch.* or *Lamb. Off. Ch.* | Lambard's Duties of Conſtable, Churchwarden, *&c.* uſually bound up with Lambard's Juſtice. |
| *Lut. Ent.* | Lutwyche's Entries. |
| *Lind.* or *Lind. Off. Arch.* | Lyndwood's Provinciale. Edition 1679. |
| *Lit.* | Littleton's Reports. |
| *Lit.* with *S.* | Littleton's Tenures; *S.* for Section. |

M.

| | |
|---|---|
| *Mad.* | Madox's Hiſtory of the Exchequer. |
| *Mad. Form.* | Madox's Formulare Anglicanum: refers to the N°. of the Formula. |
| *Mad. Form. Int.* | The Diſſertation prefixed to Madox's Formulare Anglicanum: refers to the Page. |
| *Manw.* | Manwood's Foreſt Law. 3d Edition. |
| *Mar.* | March's Reports. When the Reference is mark't *pl.* it is to the Placita; without that, to the Page. |
| *Mills.* | Rules and Orders of *C. B.* by Milles, printed 1732. |
| *Mod. Ca.* | 6th Modern Reports. |
| 2 *Mod. Ca.* | Modern Caſes in Law and Equity. 1ſt Part. |
| *Mod. Int.* | Brown's Modus Intrandi. |
| 2 *Mod. Int.* | Same Book. 2d Part. |
| *Moll. de Jur. M.* | Molloy de Jure Maritimo. 3d Edition 1682, or 5th Edition 1701. |

O.

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|---|---|
| *Off. Br.* | Officina Brevium. |
| *Off. Ex$^{r}$.* | Wentworth's Office of an Executor. Edition 1689. |
| *Ord. Cla.* | Lord Clarendon and Sir Harbottle Grimſtone's Orders of the Court of Chancery. |

P.

| | |
|---|---|
| *P. W.* | Peere Williams's Reports. |
| *Perk.* | Perkins's profitable Book treating of the Laws of England. |
| *Pl.* or *Plo.* or *Pl. Com.* | Plowden's Commentaries. |
| *Poſt* and *Ante.* | References to Diviſions and Subdiviſions of the ſame Title. |

| | |
|---|---|
| *Pr. Ch.* | Precedents in Chancery. |
| *Pr. Lond.* or *Priv. Lond.* | Privilegia Londini. 1ſt Edition. |
| *Pr. R.* or *Pr. Reg.* or *Sti. Pr. Reg.* | Style's Practical Regiſter. 2d Edition. |

Q.

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|---|---|
| *Quo W.* or *Quo. Warr.* | The Caſe of the *Quo Warranto* againſt the City of *London.* |

R.

| | |
|---|---|
| *R.* | Reſolved. |
| *Raſt. Ent.* | Raſtal's Entries. |
| *Reg.* | Regiſtrum Brevium. |
| *Reg. Pl.* | Regula Placitandi. |
| *Reg. Jud.* | Regiſtrum Judiciale. |
| *Rob. Ent.* | Robinſon's Entries. |
| *Rol.* with *l.* or a Letter, as *A.* | Roll's Abridgment; *l.* for Line; Letter for Diviſion. |
| *Rol.* without *l.* or Letter. | Roll's Reports. |
| *Rules and Orders of the Court of Chancery.* | Edit. 1739. |
| *Ruſh.* or *Ruſhw.* | Ruſhworth's Collections. Edit. 1680. |
| *Ry. F.* | Rymer's Fœdera. |

S.

| | |
|---|---|
| *Sand.* | Saunders's Reports, |
| *Seld.* | Selden. Edit. 1726. |
| *Seld. de Dec.* | Selden's Hiſtory of Tithes. 4to. 1618. |
| *Seld. J. P.* | Selden's Judicature of Parliament. |
| *Seld. Off. Ch.* or, *Canc.* or *Chan.* | Selden's Diſcourſe on the Office of Chancellor. Edit. 1726. |
| *Seld. Mare. Cl.* | Selden's Mare Clauſum. |
| *Semb.* | Semble; Seems. |
| *Som.* | Somner of Gavelkind. |
| *Ld. Som. Argt.* | Lord Somers's Argument on the Banker's Caſe. |
| *Spel. Gloſſ.* or *Sp. Gloſſ.* | Spelman's Gloſſary. 1ſt Edition 1626. |
| *St. Eccl. Caſes.* | Stillingfleet's Eccleſiaſtical Caſes. |
| *St.* or *St. P. C.* or *Sta.* or *Sta. P. C.* or *Stamf. P. C.* | Staundford's Pleas of the Crown. |
| *St. Præ. R.* or *St. Pr.* | Staundford's Prærogativa Regis. |
| *Sti.* | Style's Reports. |
| *Sti. Pr. Reg.* | Style's Practical Regiſter. 2d Edition. |
| *Supra* and *Infra.* | References to the ſame Diviſion, or Subdiviſion. |

*Temp.*

T.

| | |
|---|---|
| *Temp.* G. 2. | Reports of Cafes in Chancery and the King's Bench in the 4th, 5th, 6th and 7th Years of K. *Geo.* 2d. |
| *Th. Br.* | Thefaurus Brevium. |
| *Th. D.* or *Th. Dig.* | Theloall's Digeft. |
| *Tho.* or *Tho. Ent.* | Thompfon's Entries. |
| *Tot.* | Tothill's Tranfactions of the High Court of Chancery. Edit. 1671. |
| *Tr. Eq.* | Treatife of Equity. |
| 1 *Tr.* | State Trials compared with 2d Edit. 1730. |

V.

| | |
|---|---|
| *Vad. M.* or *Bro. V. M.* | Brown's Vade Mecum. |
| *Vid. Ent.* | Vidian's Entries. |
| *Vid. Introd.* | Vidian's Introduction to his Book of Entries. |

W.

| | |
|---|---|
| *W.* 1.—*W.* 2. | The Statutes of Weftminfter 1ft and 2d. |
| *Wat.* | Watfon's Clergyman's Law. 8vo. |
| *Went. Off. Ex.* | Wentworth's Office of an Executor. Edition 1689. |
| *Weft.* or *Weft Chan.* or *Weft Symb.* | Weft's Symboleography of the Chancery, &c. |
| *Winch.* | Winch's Reports |
| *Win. Ent.* | Winch's Entries. Edition 1680. |

Y.

| | |
|---|---|
| *Year Books.* | Compared with the Edition of 1679, 1680. |

When the Page of a Book is included in a Parenthefis, thus, (466,) that Page is twice numbred in the Book cited.

Quotations not above fpecified are fuch as are conceived to be obvious, and the References are, in general, to the common Editions of the Books.

# DEVISE.

## (A) Deviſe by the Common Law.

A Deviſe is a Diſpoſition of a Real or Perſonal Eſtate, to take Effect after the Death of the Deviſor. *Co. L.* 111. *a.*

By the Common Law, every Perſon might deviſe his Goods and Chattels.

Tho' they were Chattels real. 1 *Rol.* 609. *l.* 5.

As, a Term for Years. 1 *Rol.* 609. *l.* 5.

An Intereſt which he had as Guardian in *Chivalry*, or Socage. 1 *Rol.* 609. *l.* 7.

So, *Emblements* upon the Land; and this before the *St. of Mert.* 20 *H.* 3. 2. *as it ſeems* 2 *Inſt.* 81. *Vide Biens*, (G. 2.)

So, by the Common Law, a Man might deviſe the Uſe of Lands. 1 *Leo.* 257. *Vide Uſes*, (A.)

Tho' the Uſe was ſuſpended. 1 *Leo.* 257. *Vide Uſes*, (A.)

So, at Common Law, by the Cuſtom of ſome Cities and Boroughs, a Man may deviſe his Lands within the ſame City or Borough, as Chattels. *Co. L.* 111. *a.*

And, by the ſame Cuſtom, may deviſe a Rent out of Land. *Co. L.* 111. *a.*

So, if there be a Rent *in Eſſe* iſſuing out of ſuch Land, it may be deviſed; for the Rent follows the Nature of the Land. *Cont. per* 2 *J. Dy.* 5. *b.* 2 *Dy.* 140. *a.* *Acc. Dy.* 5. *b. in Marg.* 1 *Rol.* 609. *l.* 20. *Cro. El.* 637, 651.

So, if Land deviſable be given to a Man for Life, Remainder to another in Fee, he in Remainder may deviſe it. 1 *Rol.* 609. *l.* 30.

So, if Land deviſable eſcheats to the King, who grants it to *A.* the Grantee may deviſe the Whole. *R. Dal.* 75.

Tho' the King grants it to hold by Knight-ſervice. *R. Mo.* 70.

And therefore, by Cuſtom, Lands in *London*, *Oxford*, *&c.* may be deviſed. *Bend. pl.* 145.

And a Cuſtom to deviſe is incident to Lands of the Nature of *Gavelkind*.

So a Cuſtom will be good, that by a Deviſe, without ſaying, What Eſtate, the Deviſee ſhall have a Fee. *R. Win.* 1.

By Cuſtom, Lands were deviſable without Writing. *Co. L.* 111. *a.*

And this Cuſtom was not taken away by the *St.* 32 *&* 34 *H.* 8. *Co. L.* 111. *b.*

But now, by the *St.* 29 *Car.* 2. 3. No Bequeſt of Lands deviſable by Cuſtom is good, unleſs in Writing ſigned by the Deviſor, or ſome other in his Preſence and by his expreſs Direction, and atteſted and ſubſcribed in his Preſence by 3 or 4 Witneſſes. *Vide Poſt*, (E. 1.)

A Deviſe of Lands deviſable by Cuſtom would not be void by the *St. Marl.* 52 *H.* 3. 6. upon Pretence, that it was by Colluſion. 2 *Inſt.* 112.

And, by Cuſtom, a Will of Lands in *London*, ought to be inrolled in the *Huſtings*. *Dal.* 117.

And it ought to be proved by Citizens. *Dal.* 117.

And it shall be proved before the Ordinary, and then before the Mayor in the *Hustings*. *Cro. Car.* 396.

But Lands were not devisable, if the Devisor had only an Estate-Tail. *Co. L.* 111. *a.*

So, if a Man had a Fee expectant upon an Estate-Tail, the Fee was not devisible; for at Common Law, it was but a Possibility, and tho' the *St. de Donis* makes it a Remainder, the Custom does not extend to it. 1 *Rol.* 609. *l.* 27. *Dub. Sti.* 409.

So, without a Custom, no Lands or Tenements were devisable by the Common Law. *Co. L.* 111. *b.* 1 *Rol.* 608. *l.* 45.

## (B) Devise by Statute.

BY the *St.* 32 *H.* 8. 1. and 34 & 35 *H.* 8. 5. All Persons having any Lands, Tenements, Rents, or Hereditaments holden in Socage, and thereof seised in Fee, either Sole, or in Common, or in Coparcenary, in Possession, Reversion, or Remainder, may by their last Wills and Testaments in Writing, devise the same to any Person (not Bodies Politick) at their Will and Pleasure.

And now, by the *St.* 12 *Car.* 2. 24. All Lands are holden in free and common Socage.

## (C) Testament Nuncupative, when good.

ALL Testaments are Nuncupative, or in Writing. *Co. L.* 111. *a.*

A Nuncupative Testament, is sufficient for Goods and Chattels; but not for Land.

And will be good, tho' reduced into Writing after the Death of the Testator.

Yet before the *St.* 29 *Car.* 2. 3. it ought to be proved.

And, before Probate, was not pleadable against an Administrator. *R. Ca. Ch.* 192.

But by the *St.* 29 *Car.* 2. 3. No Nuncupative Will shall be good, which gives above the Value of 30*l.* unless proved by three Witnesses present at the making, and that the Testator, at the Time of pronouncing, bid the Persons present, or some of them, bear Witness that such was his Will, or to that Effect.

Nor, unless such Will was made in the last Sickness of the Testator, and at his Dwelling-house, or where he had been resident ten Days next before; except where he was taken sick from Home, and died before his Return.

Provided, Soldiers in actual Service, Mariners, or Seamen at Sea may dispose of any personal Estate, as before.

And, *by the same Statute*, No Testimony shall be received to prove a Nuncupative Will six Months after making; unless such Testimony, or the Substance of it, was put in Writing within six Days after making the said Will.

Nor shall any Probate of such Will pass the Seal of the Court till fourteen Days after the Testator's Death expired.

Nor, unless Process first issue to call in the Widow or next of Kin to the Deceased, to contest it, if they please.

By the *St.* 4 & 5 (or 4) *Ann.* 16. Witnesses allowable in Trials at Law, are good Witnesses to prove a Nuncupative Will, or any Thing relating to it.

By the *St.* 29 *Car.* 2. 3. No Will in Writing of perſonal Eſtate, nor any Clauſe therein ſhall be repealed or altered by *Parol* or Will Nuncupative; unleſs the ſame be put in Writing in the Teſtator's Life, and afterwards read to him and allowed by him, and proved ſo to be by three Witneſſes.

But a Man having diſpoſed of Part of his Eſtate by his Will in Writing, may diſpoſe of the Reſidue by a Nuncupative Codicil. *Ray.* 334.

So, if a reſiduary Legatee, named by a Will in Writing, dies in the Life of the Teſtator, whereby the Deviſe, as to that, is void; he may diſpoſe of it by a Nuncupative Will, if he does not alter his Executor nor any Thing elſe. *R. Ray.* 334.

So, if any Thing be inſerted in a Will in Writing, by Covin; for, as to that, it is void. *Ray.* 334.

## (D) Teſtament in Writing.

### (D. 1.) What ſhall be.

A Will in Writing is not confined to any certain Form. *Ch. R.* 195.

And therefore, if a Man being out of the Kingdom, writes a Letter in which he ſhews how he will diſpoſe of his Land; if it be well executed, it is a good Will. *R. Mo.* 177.

So, if it be written by Way of Articles of Agreement between *A.* and *B.* and concludes and be ſealed and delivered as a Deed. 1 *Mod.* 117. 3 *Keb.* 310. *R. Ca. Ch.* 248.

So Notes or Memorandums written from the Teſtator's Mouth by a Phyſician or Scrivener, *&c.* if they are afterwards executed.

Tho' they were intended to be reduced into Form, but are not.

Tho' they were never read to the Teſtator after the Writing. *R. Dy.* 72. *a. Bend.* 61. 1 *And.* 34.

So, if the Teſtator declares his Will, and wiſhes *B.* was preſent to write it, whereupon *B.* is ſent for by his Wife without other Direction, and he writes the Will in the Life of the Teſtator from the Mouths of the Witneſſes preſent, but the Teſtator was ſenſeleſs before the Writing was finiſhed. *R. Al.* 55.

And it ſhall be good for ſo much as the Witneſſes agree in, tho' they diſagree as to another Part. *R. Al.* 55.

So an Indenture, by which he gives Legacies and makes Executors, ſhall be a Will. *R. Ch. R.* 195.

So Notes in Writing prepared by *A.* which he declares to be the Effect of his Will, and which he delivers to Counſel with the Deeds of his Eſtate, as Inſtructions for his Will in Form; tho' he dies before the Will drawn by Counſel is executed. *R. Ch. R.* 273.

So, if a Will in Writing be gnawn in Pieces by Rats; if by collecting of the Pieces the particular Bequeſt can be known, it will be good. *R. Al.* 2.

And alſo, if it cannot be known to a Stranger, if the Jury finds the gnawing to be after the Death of the Teſtator. *Al.* 2.

So, if a Will in Writing be burnt or deſtroyed after the Death of the Teſtator, it is not avoided. *R. Al.* 55.

Otherwiſe, if it was deſtroyed or loſt before his Death. *R. Al.* 2. 55.

(D. 2.) What

## (D. 2.) What not.

But if a Man ſpeaks his Will, and another, without his Direction or Privity, reduces it into Writing in the Life-time of the Teſtator; this is not a Will in Writing. *Dy.* 72. *in Marg. R. Al.* 54. *Cont.* 4 *Leo.* 104.

Tho' the Effect of it be afterwards ſhewn to him, and he does not diſallow it. *R. Dy.* 72. *a. in Marg.*

Tho' he at another Time ſends for *B.* to write his Will, but does not then give him any Directions; but he writes that which he is informed the Teſtator before declared for his Will. *Al.* 54.

So, if a Man writes his Will, but ſays that he will alter it, and dies before Alteration or any Publication; it ſhall not be his Will. *R. Mo.* 874. 5.

So, if a Man makes his Will, and thereby deviſes to *A.* and his Heirs, and afterwards, upon the Death of *A.* ſays to his Heir, *that he ſhall have all the Land deviſed to A*; without a new Publication it is not a good Deviſe, becauſe it is not in Writing. *R. Pl. Com.* 345. *b.*

So a Letter or other Paper cannot be uſed to explain the Teſtator's Intent. 1 *Sal.* 232.

So, if the Inſtruction be to give *for Life*, and the Deviſe written is *in Fee*; it ſhall be void for the Whole. *R. per* 3 *J. Fenner cont.* that it ſhall be good for Life. *Mo.* 356.

So, if the Inſtruction was, to deviſe to *A. upon Condition*, and the Deviſe be written to *A.* but before the Condition written, the Teſtator dies; the Deviſe ſhall be void. 3 *Co.* 31. *b.*

So, by the *St.* 9 & 10 *W.* 3. 41. No Will of a Seaman contained in the ſame Inſtrument with a Letter of Attorny ſhall be good.

## (D. 3.) Codicil, What.

A Codicil is that which contains any Addition to, or Explanation of a Will.

The Codicil is part of the Will.

And may be made before, or after the Will.

And there may be ſeveral Codicils to the ſame Will. *Sho.* 549.

## (E. 1.) How a Teſtament ſhall be executed.

AFTER the *St.* 32 & 34 *H.* 8. It was ſufficient that a Will was put in Writing by the Teſtator, or by another with his Privity and Direction, without any other Execution. *Dy.* 53. *b.*

So, if Notes or Inſtructions were taken of the Teſtator for his Will, and it was reduced into Form purſuant to ſuch Inſtructions in the Life of the Teſtator, tho' it was never read or ſhewn to him, it was ſufficient. *R. Dy.* 72. *a.*

If it was publiſhed, tho' in looſe Sheets. 1 *Sid.* 315.

So, if Notes were written for the Diſpoſition of Part of his Eſtate, it was good for ſo much. *Dy.* 72. *a. in Marg.*

But if a Diſpoſition for Life was written in the Life-time of the Teſtator, but not of the Remainder, *&c.* it was void for the Whole. *Dy.* 72. *a. in Marg.*

But now, by the *St.* 29 *Car.* 2. 3. All Deviſes of any Lands or Tenements ſhall be in Writing ſigned by the Party ſo deviſing, or by ſome other in his Preſence and by his expreſs Directions, and ſhall be atteſted and ſubſcribed in the Preſence of the Deviſor by 3 or 4 credible Witneſſes.

And

And therefore, every Will, not ſigned and atteſted as the Statute directs, is void.

So, every Deviſe and Bequeſt, not ſo ſigned and atteſted.

As, if a Teſtator, after the Execution of his Will, adds a new Clauſe or Bequeſt, and does not execute his Will *de novo*.

So, if a Man by a Will well executed, deviſes to *B.* and his Heirs, and then *B.* dies, and the Teſtator afterwards makes a new Publication of his Will and declares that *B.* Son and Heir of the firſt Deviſee (being of the ſame Name with his Father, and having a Legacy by the ſame Will) ſhall take the Land which his Father would have had; it is not a good Deviſe to the Son, for this Declaration was not in Writing. *Cont. per 3 J. in C. B. but Judgment was reverſed in B. R. 2 Mod.* 313. *1 Vent.* 341. *2 Jon.* 135. *Ray.* 408.

So, if a Will be not ſigned by the Deviſor, or by his Direction, it is void.

So, if it be ſigned, and afterwards before Witneſſes he declares it to be his Hand. *Dub. per Cowper, Pr. Ch.* 185.

Yet if the Teſtator writes his Name at the Top or Side of the Paper, it is ſufficient; for the Statute only requires that it be ſigned, and not that it be ſubſcribed. *3 Lev.* 87.

So, if the Teſtator writes his Will with his own Hand, which begins, I *A. B. &c.* and does not put his Name otherwiſe, but it is ſealed, and well executed in other Reſpects, it is good; for it ſuffices that it was ſigned in the Text of the Will. *R. per tot. Cur. 3 Lev.* 1. *Per Jeffreys, Skin.* 227.

So, if written with his own Hand, tho' it be not ſubſcribed or ſealed by him. *Per L. Cowper. Pr. Ch.* 185.

So, if it be ſealed by the Teſtator, and he does not write his Name at all, it is good; for the Seal is a Signing. *Per 3 J. Levinz, dub. 3 Lev.* 1. *D. per Holt, Sho.* 69. *Semb. 1 Sid.* 362.

So, if it be ſigned by the Teſtator, and afterwards atteſted by Witneſſes, tho' the Teſtator did not ſign it in their Preſence. *Adm. per Trevor C. J. at Guildhall, 8 Ann. in Ejectment, Peate on the Demiſe of Oliver St. John* v. *Ougly, (Reported Comyns's Rep.* 197.) *D. per Dolben, Sho.* 69. *Adm. per C. B. P. 11 Ann. inter Ld. Nappier* and *Sir Theophilus Nappier. Semb. Skin.* 227.

So, if a Will for Land is not atteſted and ſubſcribed by three Witneſſes in the Preſence of the Deviſor, it is void. *Eq. Ca.* 130.

And therefore, if a Deviſe be by a Will ſubſcribed by two Witneſſes, and afterwards a Codicil is made, which confirms all the Deviſes in the Will, and is ſubſcribed by two Witneſſes, one of which was not a Witneſs to the Will, the Deviſe is void: for all the three Witneſſes ought to atteſt the Execution of the Will by which the Deviſe was made. *R. per tot. Cur. in B. R. Hil. 1 & 2 W. & M. inter Lee* and *Libb. Sho.* 69, 88. *3 Mod.* 262. *Carth.* 35.

So, if a Will was executed in the Preſence of three Witneſſes, one of which was a Deviſee, and therefore it was afterwards executed *de novo* in the Preſence of two others; the Deviſe is void, if the firſt Execution was not ſufficient. *Per Powel inter ——— ex dimiſſ. Went. Dilke and ———. R. Carth.* 514. *Vide infra.*

So, if a Will be executed without Witneſſes, and afterwards a Codicil is executed in Preſence of three Witneſſes, the Will without Witneſſes ſhall not be good, *R. 2 Ver.* 598.

So, if a Will be executed and atteſted by three Witneſſes, and afterwards revoked by a Feoffment, and after that the Teſtator republiſhes his Will in the Preſence of one or two Witneſſes, it is not good. *Q. Skin.* 227.

So, if a Will be ſubſcribed by three Witneſſes together in a Room where the Teſtator cannot ſee them, it is void; for it ought to be atteſted in the

Preſence of the Teſtator. *R. P.* 2 *W. & M. inter Edleſton* and *Speak. Sho.* 89. *Carth.* 80.

But if the Witneſſes ſubſcribe within the Teſtator's View, it is ſufficient, tho' it be not in the ſame Room. *R. Carth.* 81.

Or, where the Teſtator may ſee, tho' he does not. *R. Sal.* 688.

Or, if the Will was executed before the Statute, tho' the Teſtator died after. *Dub. Pr. Ch.* 77.

So, if a Will be ſubſcribed by three Witneſſes, of which one is a Deviſee, it is void as to the Deviſe to him; for, there are not three credible Witneſſes to it. *R. per B. R. T.* 10 *W.* 3. *inter Jennings* and *Hillier*. (*Reported Comyns's Rep.* 90, 94.) *Per Powel, T.* 10 *Ann. inter* —— *Dimiſſ. ex Went. Dille and* ——

But if one denies his Hand, or is not a credible Perſon, if it be found by other Evidence to be well executed, it will be good. *R. Skin.* 79, 413.

So, if it be ſubſcribed by three Witneſſes, who ſeverally ſubſcribe in the Preſence of the Teſtator but not together, it will be good. *R.* 2 *Ca. Ch.* 109. *Cont. per Holt; but Dolben acc. Vide Carth.* 37. *R. acc. Eq. Ca.* 263.

Or, if one Witneſs ſubſcribes in one Sheet of Paper in which the Will is written, and the others to another Sheet. *Per Dolben, Carth.* 37.

So, if it be publiſhed before three Witneſſes at ſeveral Times, who all atteſt in his Preſence. *R. Pr. Ch.* 185.

Or, all the Witneſſes ſubſcribe to a Paper in which the Will is incloſed. *D. Carth.* 37.

So a Deviſe of Copyhold without three Witneſſes will be good: for it paſſes by the Surrender. *R.* 2 *Ver.* 598.

## (E. 2.) Publication of a Will.

(E. 2.) What ſhall be.

If a Man ſeals and delivers his Will in the Preſence of Witneſſes; this amounts to a Publication tho' the Witneſſes know not any thing in it.

So, before the *St.* 29 *C.* 2. if he had wrote with his own Hand, *ſealed, and delivered, and publiſhed as laſt Will in the Preſence of*, tho' no Witneſs ſubſcribed it. (*Vide Peate and Ougly, Comyns's Rep.* 199.)

So, now, if it be written, *Publiſhed as laſt Will, &c.* and the Witneſſes ſubſcribe it in his Preſence, tho' he did not ſay to them that it was his Will, and they ſaw nothing of it. *Adm. per Trevor Ch. J. at Guildhall in Ejectment. Peate* and *Ougly ex dimiſſ. Ol. St. John.* (*Reported Comyns's Rep.* 197.)

So, if a Man executes and delivers his Will *de novo*, this amounts to a Republication.

So, if he delivers it *de novo*, and ſays that it ſhall be his Will. 1 *Rol.* 618. *l.* 12. *Off. Ex^r.* 35.

So, if upon his Bed *in extremis* a Man, having ſeveral Wills, be deſired to deliver to another that which he will have to ſtand, and both are put into his Hand, and he delivers the former; this will be a new Publication of it. *Off. Ex^r.* 36.

So, if a Man makes a Feoffment to the Uſe of his Will; tho' this be a Revocation of the Will, yet it amounts to a new Publication of it. *R.* 1 *Rol.* 617. *l.* 42.

So, if a Man adds Executors, and interlines a Legacy with his own Hand, this amounts to a new Publication. *Dub.* 1 *Rol.* 617. *l.* 50. *Dub. Mo.* 429. *D. Off. Ex^r.* 35.

So, if a Man makes a Codicil and annexes it to his Will; this amounts to a new Publication. *R.* 1 *Rol.* 618. *l.* 25. *Mo.* 404. *Cro. El.* 493. *Off. Ex^r.* 35.

If

If he says, *that his Will lies in a Box in his Study.* 2 *Ver.* 209.

But it does not amount to a new Publication, if the Codicil is not annexed to the Will, tho' both lie upon a Table when the Codicil is executed, and they are laid up together. *Eq. Ca.* 116.

(E. 3.) When a new Publication is necessary.

If a Man makes a Will when he has not a Capacity to make it, and afterwards the Incapacity is removed, yet the Will is not good without a new Publication; as, if an Infant makes a Will, he ought to make a new Publication after his full Age. *R.* 1 *Sid.* 162. *Vide Post*, (H. 2.—M.)

If a Man made his Will before the *St.* 27 *H.* 8. 10. *of Uses*, he ought to have made a new Publication after the *St.* 32 *H.* 8. 1. *Dy.* 143. 1 *Rol.* 617. *l.* 35.

If a Man after his Will makes an Alienation, or does any other Act, which amounts to a Revocation; the Land devised does not pass without a new Publication. 1 *Rol.* 617. *l.* 30.

So, if a Man devises all his Lands in *B.* Land afterwards purchased does not pass without a new Publication. *R. Pl. Com.* 344. *a.*

So, if a Devise be to *B.* and his Heirs, and *B.* dies in the Life of the Testator; his Heir cannot take without a new Publication.

Or, to *B.* and the Heirs of his Body. *Vide Post*, (K.)

But if he devises to his eldest Son and the Heirs of his Body, and afterwards to his 2d and 3d Son, &c. and the eldest dies in the Life of his Father, having Issue; the Issue takes without a new Publication. *Per Popb. Cro. El.* 424. *Adm.* 4 *Mod.* 283.

(E. 4.) When it shall be sufficient.

If a Man devises all his Lands in *A.* and afterwards purchases other Lands there; if he makes a new Publication of his Will, and uses Words which shew his Intent that the Lands newly purchased shall pass by it, it is sufficient to pass them; for the Words in the Will were apt for that Purpose. *R. Cro. El.* 493. 2 *Jon.* 136. *Pl. Com.* 344. *a.*

So, if he says Nothing at the Time of the new Publication, but before upon another Occasion says, that he intends the Land newly purchased for his Executor, (who was the Devisee of all his Lands in *A.*) it is sufficient. *R. Cro. El.* 493. *Mo.* 404. 1 *Rol.* 618. *l.* 20. *Dy.* 143. *in Marg.*

So, if after the new Purchase he newly executes his Will, without more. *Dub.* 1 *Rol.* 618. *l.* 12.

Or, executes and annexes to his Will a Codicil as to Goods; for this shews his Intent, that his Will at that Time shall stand. *Per Rower, but the other J. dub. Cro. El.* 493. *R. cont.* 2 *Ver.* 625, 722. *Vide Pyk.* (E. 5.)

So, if he devises to *Robert* his Son Lands in *A.* who dies, having a Son and Heir named *Robert*, and the Testator by *Parol* makes a Republication, and says, *My Grandson Robert shall have the Land in A.* It is sufficient to pass those Lands to the Grandson *Robert*; for a Devise to a Son is sufficient to give to a Grandson, if there be not a Son of the Name. *R. per 3 J. Scroggs cont. and that Judgment was reversed per Scroggs and others, as it seems,* 2 *Lev.* 243. (*Vide* 1 *Vent.* 341. *Rep.* 408. 2 *Jon.* 135. *Pal.* 546.)

(E. 5.) When not.

But a new Publication for another Purpose is not sufficient: as, if a Testator, after a new Purchase, executes a Codicil for Legacies; this is not sufficient to pass the Land, without Words for such Purpose.

Or, if he inserts a Legacy and Executor with his own Hand. *Dub.* 1 *Rol.* 617. *l.* 50. *Per Pyk.* 1 *Rol.* 618. *l.* 10.

If

If he annexes a Codicil concerning personal Estate, it shall not be a Republication as to Lands devised by his Will. *R. 2 Ver. 722. Vide Ante,* (E. 4.)

Or, if it be not annexed to the Will, tho' deposited with it in the same Place. *R. Pr. Ch. 441, 452. 2 Ver. 722. Eq. Ca. 116.*

So a new Publication, with Words declaring his Intent, is not sufficient, if the Words in the Will are not apt for it: as, if a Man devises to *A.* and the Heirs of his Body, and *A.* dies, and afterwards the Testator says, that the Son of *A.* shall have it; the Son shall not take: for he is named only by way of Limitation, and a new Publication is, as it were, a new Devise. *Dub. Cro. El. 423. R. 1 Vent. 341. Ray. 408. 2 Jon. 135. 1 Mod. 267. 2 Mod. 313. Pol. 546. R. Pl. Com. 345. b.*

Codicil confirming will is equal to republication, & as such passes lands purchased after the will. [illegible] & Vernon [illegible] 573. & also cases there referred to by me.

## (F) Revocation.

### (F. 1.) What shall be.

A Testament is ambulatory and revocable till the Death of the Testator. *Co. L. 112. b.*

So, if a Feoffment or Recovery be to the Intent to perform his Will; the Uses are revocable during his Life. *R. Dy. 314. b. Per 2 J. Mont. cont. Hob. 349.* tho' the Uses are declared by a Deed.

And therefore, if a Testator, after his Will executed, makes a Feoffment to the Use of another; this will be a Revocation.

Tho' he afterwards repurchases the same Land. *1 Rol. 616. l. 15. Cont. per Welch. Dy. 143. b. in Marg.*

Tho' the Feoffment be to the Use of himself in Fee. *1 Rol. 615. l. 50.*

Or, to the Use of himself for Life, and afterwards to his Wife for Life, and afterwards to his right Heirs. *1 Rol. 616. l. 5, 50.*

So, if the Feoffment be to the Use of his Will. *1 Rol. 614. l. 32.*

So, if he had made it before his Will before the *St. 27 H. 8.* and then the Statute executes the Possession to the Use; this will be a Revocation. *Cont. 1 Rol. 616. l. 10. Acc. 1 Rol. 616. l. 20.*

So, if Tenant in Tail devises, and afterwards suffers a Recovery to the Use of himself; it is a Revocation. *R. 3 Lev. 108.*

So, if the Devisor, after his Will, makes any Conveyance of the Land, it will be a Revocation. *2 Ca. Ch. 116.*

So, if a Man covenants to levy a Fine, and afterwards levies the Fine; tho' he makes his Will between the Time of the Covenant and the Fine levied, it will be a Revocation. *1 Rol. 614. l. 40.*

So, if he covenants to make a Feoffment, and makes a Feoffment with Livery, but by some Defect in the Livery the Feoffment is void; yet it will be a Revocation. *R. 1 Rol. 615. l. 25.* [illegible] 135 [illegible] 2 [illegible] 624.

So, if he devises a Reversion, and afterwards grants the Reversion by Deed, but the Grant is void for Want of Attornment; yet it will be a Revocation, for he has fully shewn his Intent to revoke. *Per 2 J. 1 Rol. 615. l. 30.*

So, if he devises Land, and afterwards sells by Bargain and Sale, and acknowledges it in order to be inrolled, but it is never inrolled. *Per 2 J. 1 Rol. 615. l. 40.*

So, if he makes a Charter of Feoffment for the Whole, and Livery only for Part; it will be a Revocation for the Whole. *R. Mo. 429.*

So,

So, if he devises, and afterwards, in Consideration of an intended Marriage, makes a Settlement by Lease and Release; it will be a Revocation, tho' the Marriage does not take Effect. *R. Ca. Parl.* 157.

So, if a Man devises Land, and afterwards devises the same Land to another; tho' the 2d Devise is void for the Incapacity of the Devisee. *R* 1 *Rol.* 614. *l.* 45, 50.

Or, devises to another by *Parol.* *Per Poph.* 1 *Rol.* 615. *l.* 42. *Vide infra.*

So, if he devises to *A.* in Fee, and afterwards leases to *A.* for Years, to commence after his Death; for it is inconsistent. *R.* 2 *Cro.* 49.

Tho' the Lease be delivered to a Stranger, without the Privity of *A.* *R.* 2 *Cro.* 49.

So, if he devises a Lease *pur auter vie*, and afterwards renews the Lease. *Dub.* 2 *Ver.* 209.

So, if a Man devises, but is afterwards disseised, and does not re-enter before his Death; it will be a Revocation. 1 *Rol.* 616. *l.* 25.

So, if a Man devises Land to one, and by the same Will afterwards gives an Estate, inconsistent with the first, to another; this will be a Revocation. *Co. L.* 112. *b.*

So, if a Woman makes a Will, and afterwards marries with the Devisee, and dies; it will be a Revocation. *R.* 4 *Co.* 61.

So, if a Man by *Parol* says, *I revoke my Will*, and desires the Witnesses present to witness it, and adds, *that he will alter it when he comes to D.* It will be a Revocation, tho' he dies before he comes to *D.* *R. Dy.* 310. *b.* 1 *Rol.* 614. *l.* 30. *Per Rol. Sti.* 343, 418. *Vide Post,* (F. 2.)

So, if the Testator, says, *animo testandi, A.* (who was his Heir at Law) *shall be my Heir.* *Per Cur.* 1 *Sid.* 73.

So, if he says, *I do revoke*, and desires those present to witness it, without more. 2 *Cro.* 497.

Or, *my Will shall not stand:* for tho' the Words are in the future Tense, they shew a present Resolution. *R. Cro. El.* 306. *Ow.* 76.

So, if a Man makes a Will, and devises his personal Estate to *A.* and afterwards marries, and has several Children, and dies a long Time after the Will made; It shall be presumed a Revocation by the Alteration of his Circumstances. *R. Sal.* 592.

If he devises his Real and Personal Estate to his Brother, and makes him Executor, and afterwards marries, and by a Codicil makes his Wife Executrix; she shall have the personal Estate, for it was intended for the Brother only as he was Executor. 1 *Ver.* 23.

If he devises his Lands to charitable Uses, and afterwards devises the same Estate to others to such Uses as he shall afterwards declare, and dies before any Declaration of the Uses; the subsequent Will shall be a Revocation, tho' no Estate passes thereby, the Uses not being declared. *Eq. Ca.* 8. * 

* 2d Part of 2 *Mod. Ca.*

So, if he devises a Real Estate to a Stranger, and afterwards marries and has Issue; it will be a Revocation as to the Real as well as the Personal Estate. *R. Eq. Ca. Abr.* 413. This is now settled to be the rule both as to real & personal estate. See Burr. 4 part v. 4. p. 216[illegible] [illegible] 2.171. But [illegible] that no case has yet held marriage alone to be a revocation.

But if the Devise was to a Stranger, whom he afterwards marries, and the Disposition appears reasonable, *Chancery* will establish it. *R. Tr.* 1702. *Eq. Ca. Abr.* 413.

*Vide Post,* (F. 2.)

## (F. 2.) What not.

But if a Teſtator makes an Eſtate by Act executed, it is a Revocation only ſo far as that Eſtate is inconſiſtent with the Deviſe: As, if after a Deviſe in Fee, he leaſes the ſame Land for Years; it is a Revocation only during the Term. *R.* 1 *Rol.* 616. *l.* 37.

So, if he leaſes for Life, it is a Revocation only for the Life of the Leſſee. 1 *Rol.* 616. *l.* 40.

So, if he leaſes to a Stranger for Years to commence after his Death; it is a Revocation only for the Years. 2 *Cro.* 49. *R. Cro. Car.* 23.

So, if he leaſes to the Deviſee himſelf, to commence immediately, or at a future Day in the Life of the Teſtator, for 10 or 12 Years. 2 *Cro.* 49.

So, if a Termor of a Term for 40 Years deviſes it, and afterwards leaſes for 20 Years; it is a Revocation only for 20 Years. 1 *Rol.* 616. *l.* 45.

So, if a Termor deviſes his Term, and afterwards mortgages and redeems it, the Deviſee ſhall have it. *Dy.* 143. *b. in Marg.*

So, if a Man deviſes, and afterwards mortgages the ſame Land, the Deviſee ſhall have it ſubject to the Mortgage. *Per Moreton, Ca. Ch.* 193. 1 *Sal.* 158. 1 *Ver.* 97. *Cont.* 1 *Ch. R.* 153, 4.

Tho' the Mortgage be in Fee; for it is but a Security. *Ca. Parl.* 155, 156. *R.* 1 *Ver.* 329, 342.

So, if a Man makes a Feoffment, and when he ſeals the Deed asks, *if it will not prejudice his Deviſe of the ſame Land? for then he will not ſeal it*, and Livery is made by Attorny in Part; it will be no Revocation of the Part whereof Livery is not made. *R. Ow.* 76. *Goldsb.* 32.

If he deviſes a Leaſe for three Lives, and afterwards makes a Leaſe for three other Lives; it will be a Revocation only for the Leaſe; for the Lives in the Leaſe may determine before thoſe in the Will. *R.* 2 *Ver.* 496.

So, if a Deviſor deviſes an Eſtate to one, and afterwards deviſes by the ſame Will to another, it is no Revocation if they are conſiſtent: As, if he deviſes Land to *A.* and afterwards Rent out of it to *B.* *Pl. Com.* 523. *a.* 541. *a.*

If he deviſes a Term to *Thomas*, and afterwards to his Mother during his Minority. *R. Pl. Com.* 541. *a.*

So, if he deviſes all his Lands to *A.* and afterwards Land in *D.* to another; *A.* ſhall have all, except the Land in *D.* *R. Yel.* 210. 2 *Cro.* 49. *Acc.* 2 *Rol.* 276. *R. Dal.* 3.

So, if he deviſes all to *A.* and afterwards all to *B.* they ſhall be Joint-tenants. *R. Yel.* 210. *Dy.* 4. *a. in Marg.* *Vide Poſt*, (N. 8.)

Or, to *A.* and his Heirs, and if he dies without Iſſue, to *B.* and his Heirs; *A.* ſhall have an Eſtate-Tail, Remainder in Fee to *B.* *R. Yel.* 209. 2 *Cro.* 290.

So, if a Verdict finds, that *A.* made his Will, and afterwards made another Will, but the Jurors do not know the Contents; it is no Revocation, for they may be conſiſtent. *R.* 3 *Mod.* 204. *Sho.* 537, *&c.* *R. Sal.* 592. *Ca. Parl.* 146. *R. Hard.* 375.

So, if a Woman makes a Will, and marries; it is not a Revocation, if ſhe ſurvives her Huſband. *Pl. Com.* 343. *a.*

If Tenant in Common makes a Will, by which he deviſes his Part, and afterwards makes Partition; this will not be a Revocation. *R. Ray.* 240. 1 *Sid.* 90.

So, if a Teſtator revokes Part of a Deviſe, it is no Revocation as to the Reſidue. 1 *Rol.* 617. *l.* 25.

If he deviſes for 49 Years, and afterwards leaſes for 20, it ſhall be a Revocation only for 20 Years. *Vide ſupra.*

If he deviſes in Fee, and afterwards makes a Mortgage, the Deviſee has the Equity of Redemption.

If he diſallows a Condition annexed to the Deviſe, it is no Revocation of the Deviſe. 1 *Rol.* 617. *l.* 15.

If he deviſes Land for Payment of Debts, and then to pay 200*l. per Ann.* to his Wife, and afterwards ſells Part for Payment of Debts; the Wife in Equity ſhall have 200*l. per Ann.* out of the Surplus. 2 *Ver.* 241.

If he deviſes Land to Truſtees, to be ſettled upon a Daughter, if ſhe marries with Conſent; ſhe marries with Conſent in the Life of her Father, who ſettles Part upon her and her Huſband; it ſhall be no Revocation of the Deviſe as to the Reſidue. *R.* 2 *Ver.* 721.

If he deviſes to *A. B. C.* and *D.* as Truſtees, upon Truſt, *&c.* and afterwards revokes that Part of his Will by which *A.* and *B.* are named Truſtees, and appoints that *E.* and *F.* ſhall be his Truſtees, without more; this revokes nothing but the two Truſtees, and conſtitutes two others in their Stead. *R. Eq. Ca.* 68, 77. *

* 2d Part of 2 *Mod. Ca.*

If a Stranger cancels or tears a Will after the Death of the Teſtator; it ſhall not be thereby deſtroyed, if the Pieces can be collected. 2 *Ver.* 441.

If a Teſtator ſays, *he will revoke*; this does not amount to a Revocation. *R.* 2 *Cro.* 497. *Cro. El.* 306. 1 *Rol.* 615. *l.* 5. *Mo.* 874.

So, if he does not revoke of himſelf, but in Anſwer to Queſtions. 2 *Cro.* 497. *Cro. Car.* 52.

So, if upon a Queſtion, *whether he will make a Will?* he ſays, *that he will not make any.* *Ow.* 76. *Goldsb.* 33.

So Words, not ſpoken *animo teſtandi*, do not amount to a Revocation: as, *A. ſhall be my Heir*; tho' he be his Heir at Law. 1 *Sid.* 73.

Or, if *A.* be not his Heir at Law, tho' ſpoken *animo teſtandi*; for they denote his Intention only. 1 *Sid.* 73.

So accidental Words do not amount to a Revocation: as, *A.* (who was Deviſee, and did not viſit the Teſtator) *ſhall have no Part of my Lands and Goods*, without ſpeaking of his Will. *R.* 2 *Cro.* 115.

So, if *A.* before his Death being aſked, if he will give Legacies to his Brothers, ſays, *animo teſtandi*, *I will give them nothing*; this does not revoke a former Will which gave Legacies to them. *R. Cro. Car.* 52.

So, if he be not *Compos mentis* at the Time, the Revocation is not good. 2 *Cro.* 497.

And now by the *St.* 29 *Car.* 2. 3. No Deviſe of Lands, *&c.* nor any Clauſe thereof, ſhall be revocable, but by Will or Codicil in Writing, or other Writing declaring the ſame; or by burning, cancelling, tearing, or obliterating the ſame by the Teſtator, or in his Preſence, and by his Direction: But all Deviſes of Lands, *&c.* ſhall remain in Force till the ſame be burnt, cancelled, torn, or obliterated by the Teſtator, or his Directions, or altered by ſome other Will or Codicil in Writing, or other Writing of the Deviſor, ſigned in the Preſence of three or four Witneſſes, declaring the ſame.

*By the ſame Statute*, No Will in Writing of perſonal Eſtate ſhall be altered by any Words, or Will by Word of Mouth only, unleſs put in Writing in the Teſtator's Life, and afterwards read to and allowed by him, and proved ſo to be by three Witneſſes. *Vide ante*, (C.)

If a Will be atteſted by 3 Witneſſes, but not in the Preſence of the Deviſor, whereby it is a void Will; it ſhall not be a Revocation of a former Will, within the Words, (*or other Writing ſigned in the Preſence of three*

*Witneſſes, &c.) R. P. 2 W. & M. Edgſon* and *Spenk, Sho.* 89. 3 *Mod.* 259. *Carth.* 80. *Cont. per* 2 *J. Lut. acc.* 3 *Mod.* 218. *

* (*N. B.* The 2d Will in 3 *Mod.* 218. was publiſhed and atteſted by 3 Witneſſes in the Preſence of the Deviſor, but not ſigned by him in their Preſence.)

Tho' there be Words in it which revoke all former Wills. *R. inter Edgſon* and *Spenk*; *tho' it is reported cont.* 3 *Mod.* 259. *yet Sho.* 89. *acc. R. Eq. Ca.* 130. *Pr. Ch.* 460.

So, if another Will be prepared, and the Draught ſigned by the Teſtator, and directed to be ingroſſed, who then cancels all the Sheets of the former Will, except one, (which was left upon Information, that the other Will was not ſufficient for the Land until duly executed,) and he dies before the Execution of the latter Will, the former ſhall not be revoked. *R. per Ld. Chan.* 27 *Jan.* 6 *An. inter Hide* and *Hide, Eq. Ca. Abr.* 409. *Pr. Ch.* 460.

So, if another Will was executed, but the Witneſſes did not ſubſcribe in the Preſence of the Teſtator; the former, tho' cancelled, ſhall not be revoked. *R.* 2 *Ver.* 742. *Eq. Ca.* 130.

If he deviſes Copyhold, and afterwards obliterates other Legacies, and writes *that he approves it ſo obliterated*, but dies before Publication in the Preſence of three Witneſſes; it is no Revocation as to the Deviſe of the Copyhold. *R.* 4 *Ver.* 498, 9.

But if, under the Name of the Teſtator in any Will executed, it be written *A. B. revokes his Will as to*, &c. in the Preſence and by the Direction of the Teſtator, and this be ſubſcribed by three Witneſſes; tho' it be not ſubſcribed by the Teſtator himſelf, it ſhall be a Revocation. *Semb.* 3 *Lev.* 87.

So, if a Man deviſes the *Reſidue* of his Perſonal Eſtate to *A.* who dies in the Life of the Teſtator; he may, by a Nuncupative Codicil, make *B.* Reſiduary Legatee: for this is not an Alteration of the former Will, but a Diſpoſition of that which became void by the Death of the former Legatee. *R. Rep.* 334. *Vide Ante*, (C.)

If a Man has Duplicates of his Will, and cancels one; it will be a Revocation, tho' the other be not cancelled. *R.* 2 *Ver.* 742. *Eq. Ca.* 131.

If a Man makes a Writing with Intent to revoke a former Will; it may be a Revocation, tho' not executed in ſuch Manner as is ſufficient for a new Will. *Eq. Ca.* 131.

So a Revocation by Act in Law is good, ſince the *St.* 29 *Car.* 2. 3. *Carth.* 81.

(G) Who may deviſe.

ALL Perſons, generally, who may grant, may make a Deviſe.

The King may make a Will, and deviſe his Lands or Goods. 4 *Inſt.* 335. And this was affirmed by Parliament. 16 *R.* 2. *No.* 10.

So the Queen, the King's Wife, may make an Executor. 1 *Rol.* 912. *l.* 12.

So an Alien, or a Perſon outlawed, or attainted, may make a Will and Executor for ſome Purpoſes. *Of. Ex.* 22, 23. *Cont.* of a Perſon attainted. 1 *Rol.* 912. *l.* 25.

A Man outlawed in a perſonal Action may make an Executor, or have an Adminiſtrator. 1 *Rol.* 912. *l.* 32.

So a Man againſt whom an Exigent is awarded for Felony. 5 *Co.* 111.

So an Eccleſiaſtical Perſon may deviſe his Goods and Lands Temporal: As, a Biſhop, Dean, Archdeacon, Parſon, &c. 1 *Rol.* 608. *l.* 13. &c.

## (H) Who not.

### (H. 1.) *Non Compos.*

BUT one *Non compos Mentis* cannot devise. 6 *Co.* 23. *Off. Ex.* 21. *Dy.* 204. *a.* *St.* 34 & 35 *H.* 8. 5.

And it is not sufficient that he can answer to familiar Questions, if he has not Power and Discretion to dispose. 6 *Co.* 23. *a.* *Dy.* 72. *a. in Marg.* *Mo.* 760.

So a Custom, that an Idiot or *Non compos* shall devise, is void. 2 *And.* 12.

But a Will shall not be avoided, if made by the Importunity of others. *Cont. per Roll. Sti.* 427.

Or, by Artifice; for if it be well executed, that shall not be examined. *R.* 3 *Ca. Ch.* 103. *Vide Chancery*, (3 A. 1, &c.)

Or, if the Disposition be imprudent. 2 *Mod. Ca.* 59.

### (H. 2.) Infant.

So an Infant under the Age of 21 Years cannot devise his Lands. 1 *Sid.* 162. *St.* 34 & 35 *H.* 8. 5.

Nor Goods or Chattels, under the Age of Discretion, viz. a Female under 12, and a Male under 14. *Cont. Perk.* that he may devise at 4. *Perk. Devise* 503. *Off. Ex.* 305. But *Co. L.* seems that he cannot till 17. *Co. L.* 89. *b.* Agreed, that a Female after 12, and a Male at 17, or at 15 if he be then of Discretion, may devise. 2 *Ver.* 469. *Eq. R.* 74. 10

And it belongs to the Spiritual Court to determine, at what Age he may make a Will as to Goods and Chattels. *R.* 2 *Jon.* 210. 2 *Mod.* 315.

And if the Spiritual Court determines, that he may devise them before the Age of 21, a Prohibition does not go. 2 *Jon.* 210. 2 *Mod.* 315.

But the same Day on which he attains full Age, he may make a Will of Lands: As, if he be born the 15 *May* 1660, he may make it the 14 *May* 1681. *D.* 1 *Sid.* 162.

And if he makes a Will under Age, and publishes it *de novo* after full Age, it is good. *R.* 1 *Sid.* 162. *Vide Ante*, (E. 3.)—*Post*, (M.)

So, by Custom, after 14 an Infant may devise; but to devise at 8, or 9, is a void Custom. 2 *And.* 12.

### (H. 3.) *Feme Covert.*

So a *Feme Covert* cannot make a Will during her Coverture. *Co. L.* 112. 1 *Rol.* 608. *l.* 35. 609. *l.* 40. 912. *l.* 20.

By the *St.* 34 & 35 *H.* 8. 5. she cannot devise Lands.

Nor can she make a Will to dispose of her *Chofes in Action*. 1 *Rol.* 608. *l.* 30. *Semb. Cont.* 1 *Sal.* 313.

Or, Things which she has as Executrix. 1 *Rol.* 608. *l.* 25. *Cont. per Holt*, 1 *Sal.* 313. *Per North*, 1 *Mod.* 211.

Yet she may make an Executor for such *Chofes in Action*. 1 *Rol.* 912. *l.* 17. *Cont. Off. Ex.* 285. 289.

If she be an Executrix, she may make an Executor for Things which she has as Executrix. 1 *Rol.* 608. *l.* 30. 912. *l.* 14. *Off. Ex.* 289. She may, with the Assent of her Husband. 1 *Mod.* 211. *R. Mo.* 339. 2 *And.* 92.

But if an Husband covenants or agrees before Marriage, that his Wife shall make a Will; tho' it be a void Will, the Disposition by it shall be good. *R. Cro. Car.* 219, 376, 597. *R. Cro. El.* 27.

But it is not properly a Will, nor provable by the Ordinary. *Per Holt*, 1 *Sal.* 313. *Semb. Cont.* 2 *Mod.* 172. *Pr. Ch.* 84. *Acc.* 1 *Mod.* 211.

So, if a Wife devises by Will, and the Husband assents to it after her Death, it will be good. *Semb.* 1 *Rol.* 608. *l.* 23. *R.* 1 *Mod.* 211.

And any Approbation amounts to an Assent. *R.* 2 *Mod.* 172.

An Assent given before Marriage shall be understood to be continuing, if a Dissent does not appear. 2 *Mod.* 172.

And if an Assent be once given after the Death of the Wife, he cannot afterwards dissent. 2 *Mod.* 172.

So, by the Custom of *London*, a *Feme Covert* may devise to her Husband.

Or to another, with the Assent of her Husband.

So, where the Husband is banished for his Life, by Act of Parliament, his Wife may make a Will; for she may in all Things act as a *Feme Sole*. 2 *Ver.* 104, 5.

*Vide Post*, (M.)

## (H. 4.) Person dead in Law.

So a Person dead in Law cannot make a Devise: As, an Abbot, Prior, &c. 1 *Rol.* 608. *l.* 16.

## (H. 5.) Corporation Aggregate.

So a Body Politick Aggregate cannot devise the Lands or Goods of the Corporation.

## (H. 6.) Corporation Sole.

So a Sole Corporation cannot devise Lands, &c. which it has in its Corporate Capacity: As, a Master or Warden of an Hospital cannot devise the Lands or Goods of his House. 1 *Rol.* 608. *l.* 20.

## (H. 7.) Joint-tenant.

So a Joint-tenant cannot devise Lands which he holds jointly: for the *St.* 32 & 34 *H.* 8. enables only Persons seised solely, or in Common, or in Parcenary.

So Joint-tenants and to the Heirs of one of them, he who has the Fee cannot devise during the Life of his Companion. *Per Windh*; but *Twisd.* said, that there are Opinions both ways. *Rep.* 40.

But, by the Custom of *London*, a Joint-tenant may devise.

## (H. 8.) Tenant in Tail.

So Tenant in Tail cannot devise the Lands intailed.

And, tho' he afterwards suffers a Common Recovery, it does not come to the Benefit of the Devisee. *R.* 3 *Lev.* 108.

(H. 9.) Te-

## (H. 9.) Tenant *pur auter vie.*

So, if Tenant in Tail, by Indenture inrolled bargains and ſells to *A.* and his Heirs, by which he has an Eſtate *pur auter Vie*; *A.* cannot deviſe it: for an Eſtate *pur auter Vie* was not deviſable by the *St.* 32 & 34 *H.* 8. *R.* 1 *Sand.* 261. *D.* 1 *Leo.* 252.

And, if *A.* had deviſed, and afterwards the Tenant in Tail levies a Fine; this does not enure to the Benefit of the Deviſee, but to the Benefit of the Heir of *A.* who takes the Eſtate as ſpecial Occupant. *R.* 1 *Sand.* 261.

Yet by the *St.* 29 *Car.* 2. 3. an Eſtate *pur auter Vie* is deviſable by Will in Writing ſigned by the Party deviſing the ſame, or by ſome other in his Preſence and by his expreſs Direction, atteſted and ſubſcribed in the Deviſor's Preſence by three or more Witneſſes.

## (I) Who may take by Deviſe.

ALL Perſons may take by Deviſe, who can take by Grant.

So a *Feme Covert* may take by the Deviſe of her Huſband. 1 *Rol.* 610. *l.* 3. *Vide Poſt,* (K.)

So a Perſon attainted, tho' the Deviſe be to the next of Blood. *Per* 2 *J.* 2 *Rol.* 256, 7.

So an Infant *en Ventre ſa Mere* may take by Deviſe, and the Land ſhall deſcend to the Heir, till it's Birth. *Dub.* 11 *H.* 6. 13. *Cont. Dy.* 304. *Acc. Mo.* 177. *R.* 1 *Sid.* 153. *R.* 2 *Mod.* 9. *Agreed per* 4 *J.* 2 *cont.* 1 *Lev.* 135. *Ray.* 163. *Semb.* 2 *Rol.* 335.

So, if Land be deviſed to his Executors, and he makes *A.* and *B.* his Executors, who refuſe; yet they may take the Land. *R. Mo.* 594.

So every one ſhall take as a Deviſee, who is named with ſuch Certainty that the Perſon may be known, tho' he does not take immediately upon the Death of the Teſtator: as, a Deviſe to one of the Daughters of *B.* who marries to a *Norton* within 15 Years; the firſt Daughter, who ſo marries, ſhall have it. *R. Ray.* 82.

So a Deviſe to a Woman, when ſhe marries, is good; and it ſhall deſcend to the Heir till her Marriage. *R.* 1 *Sid.* 153.

A Deviſe to the Heirs Males of *B.* now living, and other Heirs Males and Females of his Body; a Son of *B.* being Godſon to the Deviſor, ſhall take. *R.* 2 *Jon.* 100. 1 *Vent.* 334. 2 *Vent.* 313. 2 *Lev.* 232. *Pol.* 457. *Carth.* 155.

A Man, having three Daughters, deviſes to his Wife till his Heir be of full Age, paying to his Heir 10*l.* to his other Daughters 20*s.* and afterwards gives to *B.* and *C.* the younger Daughters ſo much, and if *A.* his Heir dies, &c. it ſhall be a good Deviſe to the eldeſt Daughter. *R.* 2 *Lev.* 162.

If *A.* having a Son and 7 Daughters deviſes to a younger Daughter for Life, Remainder to the Son and the Heirs of his Body, (who dies without Iſſue) Remainder to two other younger Daughters for Life, Remainder to the next of his Blood; the Son of the eldeſt Daughter ſhall have it. *Semb. Bridg.* 15.

So, tho' ſome Part of the Deſcription be miſtaken; as, if a Deviſe be, *To Bevil Grandvill 2d Son of my 2d Brother, who is my Godſon, and bears my Father's Name*; *B. G.* who was Godſon to the Teſtatrix, the Daughter of *Sir Bevil G.* took, tho' he was 2d Son of *Bernard G.* who was 2d Son of the 2d Brother of the Teſtatrix. *Per Maſter of the Rolls, H.* 8 *Ann. upon the Will of Lady J. Thornhill.*

So a Deviſe to *Eleanor* Daughter of *B.* who has ſeveral Daughters, one named *Helen*, but none *Eleanor*; *Helen* ſhall take.

If a Man deviſes to the Heir of *N.* and it be found by Verdict that *P.* his Son is reputed his Heir; *P.* ſhall take tho' *N.* be an Alien. *Semb.* 1 *Sal.* 194. *Vide Poſt*, (K.)

If he deviſes to *W.* eldeſt Son of *Chr. W. of T.* and the eldeſt Son is named *Andrew*. *R. Ch. R.* 404. *Per Weſton*, 3 *Leo.* 18.

So a Deviſe to *the Mayor and Governors of B. Hoſpital*; tho' it be not their corporate Name. 3 *Leo.* 18.

So, a Deviſe to *A.* for Life, and afterwards to the Heirs Male of the Body of his Grandfather; a Son of the Body of his Grandfather ſhall take, tho' he be not Heir general. *R.* 2 *Ver.* 729.

A Deviſe *to the Iſſue of R. begotten*; all the Iſſues take, tho' born afterwards. *R.* 2 *Ver.* 545.

A Deviſe to *A. R.* if he be known by that Name; tho' his true Name is *W. Per Ard. Gulk.* 17.

So a Deviſe to *B.* to the Uſe of another, is good to the *Ceſtuy que Uſe*. 1 *Leo.* 254. *Vide Uſes*, (C.)

But it cannot be averred to be to the Uſe of another. 4 *Co.* 4.

And if the *Ceſtuy que Uſe* refuſes, the Deviſee ſhall not have it. *R.* 1 *Leo.* 254.

*Vide Poſt*, (K.)

## (K) Who not.

*Vide Ante*, (I.)

BUT a Deviſe to *any Corporation in eſſe*, when there is no ſuch Perſon *in eſſe* at the Death of the Teſtator, is void: as, a Deviſe to ſuch a Chantry, and there is none ſuch at his Death, tho' it be afterwards erected, is void. 1 *Bul.* 69. *l.* 50.

A Deviſe to the Heir of *B.* who was an Alien; for he cannot have an Heir. *R.* 1 *Leo.* 59. 1 *Sal.* 194. *Vide Ante*, (I.)

So a Deviſe to the Heir of *B.* is void, if *B.* be living at the Death of the Deviſor; for *nemo eſt Hæres viventis*. *R.* 1 *Leo.* 59. *Semb.* 1 *Sal.* 230.

Or, to the firſt Son of *B.* when he has no Son *in eſſe* at the Death of the Teſtator. 1 *Sal.* 229.

So a Deviſe of Land or Goods to *B.* is void, if *B.* dies in the Life of the Teſtator. *Pl. Com.* 345.

So, if a Deviſe be to *B.* and his Heirs; if *B.* dies, the Heir ſhall not take, for he is named only by Way of Limitation. *R. Pl. Com.* 345.

Or, to *B.* and the Heirs of his Body, and if he dies without Iſſue, to another; if he dies in the Life of the Teſtator, his Iſſue ſhall not have it. *R. Cro. El.* 423. *Per* 2 *J.* 2. *cont. R.* 2 *Ver.* 722. *Eq. Ca.* 115. *Pr. Ch.* 442, 452.

So, if a Deviſe be to his four Daughters and their Heirs equally to be divided, and one has Iſſue, and dies in the Life of the Teſtator; the Deviſe ſhall be void for a fourth Part. *Eq. Ca.* 116.

So, if a Deviſe be to *A.* to the Uſe of *B.* and *B.* dies before the Teſtator; the Deviſe will be void. *R.* 1 *Leo.* 254.

But a Deviſe to *A.* for Life, Remainder to *B.* ſhall be good to *B.* tho' *A.* dies before the Teſtator. *Pl. Com.* 344. *b. R. Dy.* 122.

If it be to *A.* and the Iſſue of his Body, Remainder to *B.* and *A.* dies before the Teſtator, leaving Iſſue, *B.* ſhall have it. *Cro. El.* 423. *R.* 2 *Ver.* 723.

If

If to *A.* and *B.* and their Heirs, and *A.* dies in the Life of Teſtator, *B.* ſhall take the Whole. *R. Cart.* 4. 1 *Ca.* 100. *b.* *Acc.* 1 *Sal.* 238. 1 *Ver.* 425. *Fig.* 231.

So, a Deviſe to the eldeſt Son of *A.* Remainder to *B.* and *A.* has no Son; *B.* ſhall take. *R. Mod. Ca. in Eq.* 4.* * 2d Part of 2 *Mod. Ca.*

So a Deviſe to *A.* in Truſt for *B.* ſhall be good, tho' *A.* dies before the Teſtator. *Dub.* 2 *Ver.* 468.

A Deviſe of 300*l.* to *A.* with a Direction *that he ſhall give it B. when he dies, or ſooner*, ſhall be good, tho' *A.* dies in the Life of the Teſtator. *R.* 2 *Ver.* 467.

If Money be deviſed to *A. B.* and *C.* and if any of them die within Age, his Part to the Survivor; it ſhall go to the Survivor, tho' the Perſon died before the Teſtator. *R.* 2 *Ver.* 611, 653.

If a Deviſe be of Lands, to Truſtees for *A.* and *B.* till full Age, and then to convey to them; tho' *A.* dies before the Time comes for the Conveyance, the Conveyance ſhall be to his Heir. *R.* 2 *Ver.* 562.

If a Deviſe be to *A.* and *B.* in Common, and *A.* dies in the Life of the Teſtator; his Moiety is void. *Eq. Ca.* 157.*

Or, to *A.* and *B.* jointly for Life, and to their Heirs in Common; the Inheritance to *A.* ſhall be void. *R. Eq. Ca.* 159, 160.* * 2d Part of 2 *Mod. Ca.*

So a Deviſe, ſo uncertain that it cannot be known who was intended as Deviſee, is void: As, if a Deviſe be to *A.* for Life, and that it ſhall remain to his Iſſue, when he has ſeveral; the Remainder is void. *R. Cro. El.* 742. *Denied, Ray.* 83. *Cont. Pal.* 106. *R.* that by a Deviſe to the Iſſue of *B.* all the Iſſues take for Life. 2 *Ver.* 545.

So, a Deviſe to his Son, when he has ſeveral. *Cro. El.* 742. *Semb. Ray.* 82.

So a Deviſe to 20 *of the neareſt of his Kin*, ſhall be void; for it is not known who is neareſt. 1 *Rol.* 609. *l.* 12.

So, a *Deviſe melioribus Hominibus de B. Cro. El.* 743.

So, a Deviſe to his *Right Heirs of his Name and Poſterity*; where a Daughter, his Heir, is not of his Name, and his Brother is not his Heir. *R. Mo.* 860. *Hob.* 29.

So a Deviſe to the Heir at Law, of the ſame Eſtate which he would take by Deſcent, is void; for the Deſcent ſhall be preferred. 1 *Rol.* 626. *l.* 30. *Hob.* 30. 1 *Sal.* 242. *Vide Diſcent*, (A.)

Tho' it be deviſed to the Heir, ſubject to a Charge; for that does not make an Alteration of the Eſtate. *R. Lut.* 798. *Vide infra.*

Or, ſubject to a Contingency upon which another ſhall have it; for it deſcends in the mean Time. *Semb. Lut.* 798.

So a Deviſe by him in Remainder in Fee, of the ſame Eſtate, which the Deviſee would take by Deſcent, ſhall be void. 1 *Sal.* 233.

But if the Deviſe gives the Eſtate to the Heir in another Quality, he ſhall take by the Deviſe: As, if the Deviſe be to Co-Heirs to hold jointly, or in Common. *R.* 1 *Lea.* 315. *R. Cro. El.* 431. *R. Bend. pl.* 63. *Vide Aſſets*, (B.)

Or, to an Heir upon Condition to pay Debts, and for Non-payment, to another. *R. Cro. Car.* 161. *Cont. per Holt*, for the Heir takes by Deſcent, and upon Failure of Payment, the other ſhall have it by Way of executory Deviſe. *Mod. Ca.* 241. *Per* 2 *J. acc.* 2 *Mod.* 286. *R. Cont. Lut.* 798. 1 *Sal.* 241. *Vide Supra.*

If the Deviſor has two Daughters, and deviſes to the Son and Heir of one, he ſhall take the Whole by the Will. *R.* 1 *Sal.* 242.

If he deviſes the Whole to one Daughter, ſhe takes the Whole by Deviſe. *Per Dod*, 2 *Rol.* 352.

So, if he in Reverſion deviſes an Eſtate to others, in the ſame Words by which it was limited to them by a prior Settlement; the Deviſe ſhall be good, for the Tenure is thereby varied. *R.* 1 *Sal.* 233.

## (L) What Things may be deviſed.

*Vide Ante*, (A.—B.—G.—H. 1, &c.)

BY the *Statutes* 32 & 34 *H.* 8. A Man may deviſe all his Lands, Tenements, Rents, and Hereditaments.

So, if a Man has a Rent for him and his Heirs for the Life of *B.* he may deviſe it. *Dub. Cro. El.* 805. *Mo.* 625.

So an Intereſt, tho' it be in Contingency, may be deviſed. *R.* 2 *Rol.* 129. *Vide Poſt*, (M.)

## (M) What not.

BUT a Deviſe of Lands, of which a Man is Joint-tenant, is void. *Vide Ante*, (H. 7.)

Or, which he has in his politick Capacity. *Vide Ante*, (H. 6.)

So a Man cannot deviſe Lands, which he has not at the Time of his making, or republiſhing his Will; for the Statute ſays, *having Lands may deviſe*. 3 *Co.* 30, 1.

And therefore, if a Man deviſes all his Lands in *A.* and afterwards purchaſes other Lands there; the new Purchaſe does not paſs, without a new Publication. *R. Pl. Com.* 344. *Vide Ante*, (E. 3.)—*Poſt*, (N. 21.)

So, if he deviſes all Lands, which he has or ſhall have at the Time of his Death. *Dub. Lut.* 736. *R.* 1 *Sal.* 237. *F,g.* 225, 234.

Yet, if he deviſes a Reverſion after an Eſtate for Life, or in Tail, and that comes to his Poſſeſſion; the Land paſſes. *F,g.* 231.

So, if a Diſſeiſee, before Entry, deviſes his Land, the Deviſe is void.

Or, be afterwards diſſeiſed, and dies before Entry. 1 *Mod.* 217.

If an Infant, *Feme Covert*, &c. deviſes, and does not republiſh after full Age, or the Coverture diſſolved, it will be void. *F,g.* 226. *Vide Ante*, (E. 3.—H. 2, 3.)

Tho' the Lands are deviſable by Cuſtom; for he ought to be ſeiſed at the Time of his Will. *F,g.* 226, 228, 243.

So, if a Man deviſes all his Chattels, a Term for Years, afterwards purchaſed, does not paſs. *Semb.* 1 *Sal.* 238. *F,g.* 228, 9.

Yet, if *A.* deviſes the Manor of *D.* and afterwards purchaſes it, and dies; the Deviſe will be good, tho' he had it not at the Time of making the Will. *Pl. Com.* 344. *a. Cont. per Holt*, *F,g.* 230.

So, if a Diſſeiſee by Will deviſes Land, and afterwards enters upon it; the Deviſe will be good. 1 *Sal.* 237. *F,g.* 230.

If he in Remainder deviſes, and afterwards the Tenant for Life dies; his Deviſe will be good. 1 *Sal.* 237.

So, if a Man deviſes a Manor, and a Tenancy afterwards eſcheats; it paſſes by the Will. 1 *Sal.* 238.

So, if he who has an Eſtate only by Eſtoppel, deviſes; it will be good againſt Parties or Privies to the Eſtoppel. *Semb. Jon.* 457.

So, if a Man deviſes his perſonal Chattels, Goods afterwards purchaſed paſs. 1 *Sal.* 237, 8.

When a void or defective Deviſe ſhall be aided, *Vide Chancery*, (3 A. 1, &c.)

What Goods and Chattels cannot be deviſed, *Vide Chancery*, (3 Y. 5.)

(N) De-

## (N) Deviſes, how expounded.

### (N. 1.) What Words make a Deviſe.

ANY Words, which ſhew the Intent of a Deviſor to diſpoſe, are ſufficient for a Deviſe: As, if he ſays, *I releaſe all my Lands to A. and his Heirs.* *R. Bend.* 30. 1 *And.* 33. 2 *And.* 13. *Vide Chancery,* (3 Y. 7.)

*I will my Feoffees ſhall ſtand ſeiſed to the Uſe of A.* 1 *Rol.* 611. *l.* 10.

Tho' they cannot ſtand ſeiſed to ſuch Uſe. *R. Dy.* 323. 1 *Rol.* 611. *l.* 15.

Tho' he had not any Feoffees of that Land; for his Intent appears, that *A.* ſhall have the Land. *R.* 1 *Rol.* 611. *l.* 20. *Mo.* 280.

*A. B. did declare, that his Brother and his Heirs ſhould be Heir to his Land,* being written by a Stranger, and ſigned by *A. B.* was ſufficient. *R.* 1 *Sid.* 362.

If *A.* covenants to levy a Fine of Land to ſuch Uſes, and does not levy it, but by his Will confirms all Eſtates granted by ſuch Deed; it will be a good Deviſe, tho' only intended to be granted. *R.* 1 *Sal.* 225.

If he ſays, *My younger Son ſhall grant a Rent out of ſuch Land, to B;* it is a Deviſe of the Land to the younger Son. 2 *Rol.* 478.

*I promiſe to entail the Land to B. and the Heirs of his Body, &c.* amounts to a Deviſe. *R.* 2 *Rol.* 478.

A Deviſe *to A. and his Heirs, to the Intent that he permit B. to take the Profits for his Life, and after his Death to ſtand ſeiſed to the Uſe of the Heirs of the Body of B.* will be a Deviſe executed in *B.* in Tail. *R. Lut.* 824. *Sal.* 679.

So, if a Man deviſes *the Rents and Profits of Land;* the Land itſelf paſſes. *Vide* 1 *Sal.* 228.

Or, gives Authority to *A. to take the Profits of the Land until he be paid* 400 *l.* *Al.* 45.

Or, deviſes that *A. receive the Rents by the Hand of his Executor;* it will be a Deviſe to the Executor in Truſt for *A.* *Per* 2 *J. Holt cont.* 5 *Mod.* 63. 103, 4. Said to be, *per* 2 *J. cont. Holt. acc.* 1 *Sal.* 228.

Or, *that his Executor ſhall have the Rents and Profits for the Maintenance of his Children until the full Age of his Son;* it will be a Deviſe to the Executor. *R. Cart.* 25.

But a Deviſe *that his Executor ſhall ſell,* does not amount to a Diſpoſition, but gives an Authority only. *Mod. Ca.* 111.

So, if *A.* deviſes Lands *to his Son at his Age of* 24, *and that B. ſhall have in the mean Time the Overſight and Dealing of the ſaid Lands;* *B.* has only an Authority. *R. Mo.* 774.

A Deviſe of Money to his Wife, *to pay for Land, which with Land in A. is eſtated on my Wife, and is in full of her Jointure,* is not a Deviſe of the Land to her. *R. per* 3 *J. Powel cont.* 2 *Vent.* 57. 3 *Lev.* 259.

### (N. 2.) By what Words Lands paſs in a Deviſe.

What Deſcription is ſufficient to paſs Lands in a Grant, *Vide Fait,* (E. 4.) —*Grant,* (E. 1, &c.)

In a Deviſe ſuch Deſcription, by which the Intent of the Deviſor may be collected, is ſufficient: As, if a Man deviſes 20 *l.* a Year out of his Lands, without ſaying, what Part; the Deviſee ſhall take ſo much in Common with his Heir. *Lit.* 218. *Dy.* 280. *b. in Marg.*

If

If he leaſes Land for 10 *l.* Rent, and *as concerning the Diſpoſition of all his Lands and Tenements deviſes his Rent of* 10 *l. in A. to his Wife*; ſhe ſhall have the Land itſelf by this Deviſe. *R.* 2 *Cro.* 104. *Mo.* 771.

Tho' by the ſame Will he deviſes other Land which was in Leaſe, by the Name of *his Land*. *Vide Mo.* 772.

If he deviſes *all his Lands*; Fee-farm Rents, iſſuing out of thoſe Lands, and which were afterwards purchaſed by the Deviſor, paſs. *R. Eq. Ca.* 78. * *Vide infra.*

* 2d Part of 2 Mod. Ca.

If *A.* has the Reverſion of Tithes after the Death of *B.* and deviſes *all his Fee-ſimple Lands to his Brother, if his Wife has not a Son, but a Daughter*, and dies, having no other Tenements; the Reverſion of the Tithes paſſes. *R.* 1 *Rol.* 614. *l.* 7.

So, if he deviſes *all his Real Eſtate*, Copyhold Lands paſs. *R. Eq. Ca.* 78. *

* 2d Part of 2 Mod. Ca.

If he deviſes *his Rents*, or *Lands mentioned in ſuch a Deed, or Writing*, it will be good. *R.* 2 *Cro.* 145.

If he deviſes *all his Lands*, (having Land in Poſſeſſion, and Land in Reverſion after an Eſtate for Life) to his Executors for ten Years, and then to ſell for Payment of Debts, and the Eſtate for Life ceaſes; they may ſell the Land in Reverſion. *R. Cro. El.* 525. *Ow.* 155.

If a Man deviſes to *A.* for Life, and to enable his Wife to pay his Debts and Legacies deviſes *all his Lands, Tenements, and Hereditaments not diſpoſed of before to his Wife for ever*; the Reverſion of the Lands deviſed to *A.* paſſes to the Wife as an Hereditament not before diſpoſed of, tho' he had Aſſets ſufficient otherwiſe. *R. cont. in B. R. but the Judgment was reverſed and R. acc. per all the Judges in the Exchequer-Chamber.* 2 *Vent.* 285. 3 *Mod.* 229.

If he deviſes a Manor for ſix Years, other Land to *A.* in Fee, and *all the Reſt of his Lands* to *B*; by this the Reverſion of his Manor paſſes. *Al.* 28. *R.* 1 *Lev.* 212. *Adm. Mod. Ca.* 111.

If he deviſes ſeveral Legacies, and afterwards ſuch and ſuch Lands, *and all the Reſt of his Goods, Monies, and other Eſtate whatſoever* to his Executor, having other Lands; thoſe paſs to the Executor. *Per Ld. K. Ca. Ch.* 262.

If he deviſes all *his Real and Perſonal Eſtate*, Fee-farm Rents paſs. *R. Mod. Ca.* 107. 1 *Sal.* 237. *Vide ſupra.*

So, if it be, *all the Reſidue* of his Real and Perſonal Eſtate. *Mod. Ca.* 108.

Tho' it be accompanied with Words, which denote the Perſonal Eſtate only. *Mod. Ca.* 108.

Yet if a Man deviſes *all his Lands to A. and B. and their Heirs, as Tenants in Common*, and afterwards *all the Reſidue of his Real and Perſonal Eſtate to D. and his Heirs*; *A.* dies before the Teſtator; his Part does not go to *D.* but to the Heir of the Teſtator. *Dub.* 2 *Mod. Ca.* 124, 221, 224, 225.

So, if any Part of the Deſcription is certain, it is ſufficient tho' the other Part fails: as, if he deviſes *his Corner-Houſe in the Tenure of A. and B.* and *A.* only has it. *R. Cro. Car.* 447, 473. 1 *Rol.* 613. *l.* 51. *Jon.* 379.

Or, if he has a Corner-Houſe in the Poſſeſſion of *A.* and another Houſe adjoining in the Poſſeſſion of *C.* and deviſes *his Corner-Houſe in the Poſſeſſion of A. and C.*; the Corner-Houſe only paſſes. *R. Cro. Car.* 447. *Jon.* 379.

If he deviſes *his Tenement with its Appurtenances in which H. dwelleth in B*; Land appurtenant, tho' out of *B.* paſſes. *R. Cro. El.* 113.

So, if the Words may be aſcertained by a Thing to which they refer, it is ſufficient: as, if a Man, by Deed, covenants upon the Marriage of his Son, to levy a Fine to the Uſe of *G.* his Son in Tail, *&c.* and afterwards by his

Will ſays, *I ratify to G. all thoſe my Eſtates granted in Marriage, &c.* tho' no Fine was levied, whereby the Conveyance was void, yet the Lands paſs to him in Tail by the Will. *R.* 4 *Mod.* 132. 1 *Sal.* 225.

If *A.* contracts with *B.* for Land, and takes a Conveyance of it from *C.* and afterwards deviſes *all the Land purchaſed of B.* it will be a good Deviſe of thoſe Lands. *R.* 1 *And.* 188.

So, if the Words are joined to another Sentence, and governed by a Verb of it, they ſhall be aſcertained by it: as, if a Man deviſes *Black-Acre in Fee to A. and alſo White-Acre*; he ſhall have a Fee in *White-Acre*. 1 *Sal.* 235.

If he deviſes *all his Eſtate in his Term, and alſo B.* (in which he had an Inheritance) the Deviſee ſhall have a Fee in *B.* *Per* 3 *J. Holt cont.* 1 *Sal.* 234.

If he deviſes Land in *A.* to *B.* and the Heirs of his Body, and deviſes to him Land in *D.* and alſo Land in *S.* then deviſes Land in *F. to hold the laſt deviſed Premiſſes to him and the Heirs of his Body*; he ſhall have an Eſtate-Tail in the Lands in *D.* and *S.* as well as in *F.* *R.* 1 *And.* 160. 1 *Leo.* 57. *Sav.* 80.

So, if there be a ſufficient Deſcription, it ſhall not be controlled or reſtrained by an imperfect Explanation afterwards: as, if a Man deviſes *all his Tenements in A.* to Truſtees, to pay his Debts till *B.* attain 21, and afterwards *all the ſame Tenements, viz.* 2 Parts of *N.* Tenement for ſuch a Purpoſe, and the third Part for ſuch, and then to *B.* but ſays nothing of *U.* Tenement; yet that paſſes to *B.* for he has before given all to him. *R.* 4 *Mod.* 141.

If a Man deviſes *all his Meſſuage in which N. dwells called the Swan*; tho' *N.* had only three Rooms, the whole Meſſuage paſſes: for the Name of *the Swan* aſcertains the Whole. *R. Cro. Car.* 129. *Jon.* 195.

## (N. 3.) By what, not.

But where Words in a Deviſe are expreſs, they ſhall not be extended by Implication: as, if a Man has an Houſe and Land in *A.* and a Houſe and Land in *B.* and deviſes *his Houſe and Land in A. with all his other Lands, Meadows and Paſtures in B.* this does not extend to his Houſe in *B.* *R. Cro. El.* 476, 658. *Mo.* 359.* *Ow.* 75. *Vide Poſt*, (N. 12, 13.)

If he has Land named *H.* in *A.* and *B.* and deviſes *his Land in A. called H*; ſo much as lies in *A.* only paſſes. *R.* 2 *Cro.* 22.

So, if he deviſes it *to his Son, and if he dies without Iſſue, then he deviſes H.* generally *to his Daughters*; that which lies in *A.* only paſſes to the Daughters, for no more was deviſed to the Son. *R. Per* 3 *J.* 2 *cont.* 2 *Cro.* 22. *Cro. El.* 674.

If he has Land in *A.* and *B.* in *Wales*, and Mortgages of Land in other Counties in *Wales*, and deviſes *his Lands in A. and B. or elſewhere in Wales*, to *D.* and the Reſidue of his perſonal Eſtate, to his Executor; the Mortgages do not paſs to *D.* for the Words, *or elſewhere in Wales*, extend to little Parcels out of *A.* and *B.* but not to Lands of another Nature. *R.* 1 *Ver.* 4.

If *A.* has 100 Acres of Land named *Jacks*, and lets an Houſe and 60 Acres of his Land to *B.* and then deviſes to his Wife *the ſaid Houſe and all his Land named Jacks, in the Poſſeſſion of B.* only the 60 Acres paſs. 2 *Leo.* 226. *Vide Poſt*, (N. 13.)

If *A.* Tenant for Life, Remainder to his Son in Tail, Remainder to himſelf in Fee, deviſes *all his Lands, &c. to Truſtees, to raiſe Portions for his Daughters; and if his Son dies without Iſſue, all, except A. B. and C. to one Daughter, and A. B. and C. to another Daughter*; *and whereas he had other*

* (*Mo.* 359. reports this *Cont.* and ſo 2 *Rol.* 49. *l.* 53. 50. *l.* 4. but 2 *Rol.* 57. *l.* 25. and 2 *And.* 123. *acc.*)

*Lands which his Father desired his Cousin should have, he requested his Brother to provide for that:* those other Lands do not pass to the first Daughter, but descend to both the Daughters, upon the Death of his Son without Issue. *R. Skin.* 631.

So general and uncertain Words shall not be extended by Construction: As, if a Man gives *all to his Mother, all to his Mother*; this does not amount to a Devise of his Lands. *R. Ray.* 97. 1 *Sid.* 191. 1 *Lev.* 130.

If he devises *the Manor of B. to A. and his Heirs, and his Manor of C. to S. for Life, and if he dies, living A. to him who has his Manor of B*; afterwards *A.* sells the Manor of *B.* then *S.* dies; *A.* shall not have the Manor of *C.* *R.* 1 *And.* 306.

If he devises to *A. for Life, and afterwards exitui suo,* and he leaves a Son and a Daughter; the Remainder does not go to both, but shall be void for the Uncertainty. *R.* 2 *And.* 134.

If he says, *I make A. Executor of all my Goods, Lands, and Chattels*; it shall not be a Devise of Lands, tho' he has no Chattels Real. *R. Eq. Ca.* 137.

So a Devise *to a Wife, of so much Money to pay for Lands purchased of A. which are settled upon the Wife for her Jointure,* when they are not settled, shall not be a Devise of the Lands themselves. *R. Per* 3 *J. Powel cont.* 3 *Lev.* 259. 2 *Vent.* 56.

So general Words shall not be extended beyond Words of an inferior Species, which precede them: As, if a Man devises *his Land to A. and all his Goods, Chattels, Estates, Mortgages, Debts, &c. to B.* The Word *Mortgages* does not extend to Mortgages in Fee not forfeited. 1 *Rol.* 834. *l.* 46. * It extends to give them only for Life. *Jon.* 380. 1 *Rol.* 834. *l.* 46. *Cro. Car.* 447, 449.

(*N. B. Jon.* 380. and *Cro. Car.* 447, 449, where the Case is reported mention the Mortgages *as forfeited,* tho' *Rol. Ab.* states them otherwise.)

So, *Estates* being subsequent to *Goods,* does not amount to a Devise of a Fee in the Land. *R. Jon.* 380. *Cro. Car.* 447, 449.

So a Devise of all his *Lands, Tenements, and Hereditaments,* does not pass Mortgages in Fee, tho' forfeited. *R.* 2 *Ver.* 625.

Tho' he afterwards forecloses them, or gets a Release of the Equity. *R.* 2 *Ver.* 625.

But Words, which otherwise can have no Effect, tho' accompanied with Words of an inferior Nature, shall not be rejected: As, if a Man devises *the Rest of his Goods, Lands, and Moveables to his Children*; Lands, of which he was seised in Fee, pass for Life. *R. Mo.* 594.

So, where the Words of a Will are express, they shall not be avoided in Favour of the Heir at Law. 2 *Ver.* 340.

When leasehold for years will pass by general devise of lands & hereditts, see 6 Term Rep. 345.

What passes by a Devise *Cum pertinentiis,* or as Incident, *Vide in Grant,* (E. 9, 11.)

What passes by the word effects, see Comp. 384.

## (N. 4.) What Words pass a Fee.

*Vide Post,* (N. 6.)

Words, which shew an Intent that the Devisee shall have a greater Estate than for Life, and do not limit an Estate-Tail, make a Fee, tho' there be not the Word *Heirs.*

As, if a Man devises Land to *B. in perpetuum,* he shall have a Fee. *R. Cro. Car.* 129. *Jon.* 195. 1 *Rol.* 834. *l.* 10. *Co. L.* 9. *b.*

Or, *to B. habend. sibi & suis. R. Bend. pl.* 9.

Or, *to B. and his Assigns for ever.* 1 *Rol.* 834. *l.* 15.

*To B. and his Heir,* in the singular Number. 1 *Rol.* 832. *l.* 40.

To *B. & sanguini suo.* 1 *Rol.* 834. *l.* 17. But this is is only an Estate-Tail. *Per Holt, Mod. Ca.* 110.

*To B. and his Successors.* 1 *Rol.* 835. *l.* 15.

So,

So, if he deviſes *to B. to diſpoſe at his Will and Pleaſure.* 1 *Rol.* 834. *l.* 12. *R. Mo.* 57. *Bend. pl.* 9.

Or, *to give to his Children. Mod. Ca.* 111.

*To diſpoſe of to which of his Children he pleaſes*; for he may diſpoſe in Fee. *Dub.* 2 *Lev.* 104. *and afterwards R. acc. per* 3 *J. Vau. cont.* that he may diſpoſe of the Fee. 1 *Mod.* 189. *Cart.* 232. 1 *Sal.* 240. *Semb. Jon.* 137. *Lat.* 939.

*To make Proviſion for his Children. Mod. Ca.* 110.

Upon Truſts which are perpetual. *R.* 2 *Mod. Ca.* 255, 382.

So, if he deviſes to *B. paying a Sum in Groſs.* 1 *Rol.* 834. *l.* 8. 2 *Mod.* 25. *R.* 6 *Co.* 16. *a. R. Cro. El.* 204. *Bro. Teſtament* 18. *Bro. Eſtates* 78. 2 *Ver.* 106. *R.* 1 *And.* 38. *R.* 2 *Cro.* 591, 599. *R.* 2 *Cro.* 527.

Or, *paying ſo much out of the Profits to A. for Life, and* 20 *s. per Ann. to B. for Life. R.* 2 *Rol.* 80. *Vide Poſt*, (N. 7.)

Or, *in Conſideration that he releaſe a Debt. R. Bend. pl.* 19. 1 *And.* 35. 2 *And.* 13.

Or, *to pay his Debts. Dy.* 371. *b. R. Bend.* 37. *Cont. Dal.* 13. *R. acc. Ca. Ch.* 196.

Or, *paying a Rent out of it perpetually.* 1 *Rol.* 835. *l.* 30. *R. Sal.* 685.

Or, *paying ſo much per Ann.* tho' leſs than the annual Rent, if there be a Poſſibility of Loſs thereby. *R.* 2 *Mod.* 25. *Pol.* 399. *R. Cro. El.* 378.

Or, *that he allow Maintenance to A. for his Life*; for he ought to allow it immediately. *R.* 2 *Jon.* 107. *Pol.* 545.

So, if he deviſes 10 *l. per Ann.* and deviſes Legacies of 120 *l. to be paid out of it within a Year*; for they cannot be paid out of the annual Profits. *R.* 2 *Lev.* 249. 2 *Jon.* 113. *but reported cont. Pol.* 553.

So, if he deviſes *the Reſt of his Goods and Land to A. to diſcharge all Things charged in his Will*; *A.* ſhall have a Fee. 1 *Ch. R.* 191.

So, if he deviſes *to A. for Life, and then to a Son of A. except A. purchaſes Land of the ſame Value for his Son, and then A. ſhall ſell*; *A.* does not purchaſe, *&c.* the Son has a Fee: for *Purchaſe* in the 2d Clauſe imports an abſolute Purchaſe. *R.* 1 *Rol.* 833. *l.* 50. 2 *Cro.* 599. *Hob.* 65. *Vide infra.*

So a Deviſe, *that his Executor ſhall purchaſe* 100 *l. per Ann. for his Son*, gives him a Fee. 1 *Rol.* 834. *l.* 5.

So, a Deviſe to *A. if he releaſes a Debt to the Deviſor's Executor.* 1 *And.* 35. 2 *And.* 13.

So, a Deviſe *to* 3 *Daughters, and if one dies before the others, one to be Heir to the other*, gives a Fee. *R.* 1 *Rol.* 833. *l.* 45. *Vide Poſt*, (N. 7.)

So, if he deviſes *to A. and if he dies under Age to the Heirs of the Deviſor*, *A.* has a Fee; for when he gives it to his own Heirs, if *A.* dies under Age, it imports that the Heir of *A.* ſhall have it, if he does not ſo die. 2 *Sand.* 388.

So, if he deviſes *to A. but if his Father purchaſes other Land of like Value, to another*; *A.* has a Fee: for, *Purchaſe*, imports a Fee, and, *to the Value*, ought to be, to the Value of the whole Eſtate. *R. Hob.* 65. 1 *Rol.* 834. *l.* 5. 835. *l.* 20. *Vide ſupra.*

So, if he deviſes *to A. and if he aliens, that it ſhall revert*, and ſays that *he ſhall pay* 3 *l. to B. and his Heirs. R. Cro. El.* 745.

So, if a Man deviſes to another *all his Lands of Inheritance. R. Mo.* 873.

*All his Tenant Right Eſtate* in ſuch Land. *R.* 1 *Mod.* 100. 2 *Lev.* 91.

So, *all his Eſtate. R.* 3 *Mod.* 45. *R.* 1 *Rol.* 835. *l.* 5. *R. Mod. Ca.* 109. 1 *Sal.* 237.

Or, *his whole Eſtate paying Debts and Legacies*; if his perſonal Eſtate be not ſufficient for the Debts. *R.* 1 *Rol.* 834. *l.* 30.

So, if he deviſes *to A. for Years, and that A. ſhall have the Inheritance, if the Law will allow it.* *R. Hob.* 2.

So, if he deviſes *to A. for Life,* and afterwards *all my Lands, Tenements, and Hereditaments not before diſpoſed of, to B*; this gives the Reverſion of the Lands before deviſed, to *B.* in Fee. *R.* 2 *Vent.* 285. *Carth.* 50. *R.* 2 *Ver.* 560.

Or, *all the Reſt and Remainder of my Eſtate to B*: this gives the Reverſion of the Lands before diſpoſed of, and the other Lands not diſpoſed of, to *B.* in Fee. *Semb.* 4 *Mod.* 90. 3 *Mod.* 228. *R.* 2 *Ver.* 564. *R. Eq. Ca.* 92. *

* 2d Part of 2 Mod. Ca.

So, if he deviſes his Lands in *A.* to one, *and all other his Lands, Tenements, and Hereditaments to his Brother; alſo I give to my Brother all my Goods, Chattles, &c. and whatſoever elſe I have in the World, &c.* theſe laſt Words give him a Fee. *R. in C. B. T.* 8 *An. inter Hopewell* and *Ackland* *. 1 *Sal.* 239. 2 *Ver.* 687.

* (Reported Comyn's Rep. 164.)

So, if he deviſes *to A. for Life, and the whole Remainder to B. and if B. dies under Age, to C. and his Heirs*; *B.* has a Fee. *R. Lut.* 764.

Or, deviſes *the Fee-Simple to A. and after his Death to B. for Life*; *A.* has the Fee after the Death of *B.* *R. Dy.* 357. 2 *Rol.* 425. *Bend. pl.* 293.

So, if he deviſes *all his Eſtate Real and Perſonal for Payment of his Debts and Legacies.* *R. Ca. Ch.* 196.

If he deviſes the Fee of his Eſtate *to a Woman for Life, and afterwards to her Son* generally, the Son has a Fee. *R.* 1 *And.* 51.

If he deviſes *Blackacre to A. for Life, and all his Lands not before diſpoſed of to B*; the Reverſion paſſes to *B.* in Fee. *R.* 2 *Ver.* 461.

If *A.* by Settlement Tenant for Life of Part and Tenant in Tail of other Part, the Reverſion of the Whole to him in Fee, deviſes all his Lands and Hereditaments *out of Settlement* to his Nephew; the Reverſion paſſes. *R.* 2 *Ver.* 623.

*Vide Poſt,* (N. 6.)

## (N. 5.) What Words make an Eſtate Tail.

*Vide Eſtates,* (B. 3, &c.)

If a Man deviſes Land to another *and his Iſſues*; this makes an Eſtate Tail, in a Will, 1 *Rol.* 835. *l.* 47. if he has no Iſſue alive. 1 *Vent.* 229.

Or, to another *and his Heirs Male*; for the Law ſupplies the Words, *of his Body.* *Co. L.* 25. *b.* *Per* 2 *J.* 27 *H.* 8. 27. *a.*

So, to another *and his Children,* if he has no Child living. *R.* 6 *Co.* 17. *a.* *Mo.* 397.

To another *and the Fruit of his Body.* *R. Mo.* 637.

*To A. and his Heirs legitimè procreatis.* *Mo.* 637.

*To the Heirs Males of the Body of B. now living*; the Son of *B.* (who was the Perſon deſigned to take) takes an Eſtate Tail. *R.* 2 *Vent.* 313.

*To A. and the Heir Male of his Body,* in the ſingular Number. *R. Cro. El.* 313. *Cont.* if it be, *to the eldeſt Iſſue Male.* *R. Sav.* 75.

*To A. and his Iſſue Male.* *Cro. El.* 40.

So, if a Deviſe be *to A. and if he dies without Iſſue, to another*; *A.* has an Eſtate Tail. *R.* 3 *Mod.* 123. *R.* 1 *Rol.* 837. *l.* 3. *Per Hale,* 1 *Vent.* 230. ~ 1 Lev. 57. 1 Mod. 605.

So a Deviſe *to A. and if he dies not having a Son, &c. A.* takes in Tail Male. *Per Popb. Mo.* 682. 1 *Vent.* 231.

So, a Deviſe to *A. and if he marries and has Iſſue Male, his Son ſhall have it; and if he has no Iſſue Male, B. ſhall have it.* *R.* 9 *Co.* 127.

So, a Deviſe to *A. for Life, and then to B. and if A. and B. and his Heirs die and his Siſter ſurvives them, ſhe ſhall have it*; *B.* has an Eſtate Tail. *R.* 2 *Cro.* 416.

A Devise *to A. and such Heir of his Body as shall be living at his Death, and in Default of such, the Remainder to another*; *A.* has an Estate Tail. *R.* 2 *Ver.* 325.

So, a Devise *to A. for Life, and after his Death to the Heirs of his Body*, gives an Estate Tail, executed in *A.* *R. Cart.* 171. *R.* 2 *Lev.* 58. *R.* 1 *Rol.* 836. *l.* 50. *R. Lut.* 824. *Sal.* 679.

Or, *to A. for Life, and after his Death to the Men-Children of his Body.* *R. Mo.* 397. *Bend.* 30.

Or, *to A. for Life, and afterwards to his Heir Male.* *Per Popb. Mo.* 397. *Cart.* 171. 2 *Ver.* 325.

*To A. for Life, and if she marries after his Death and has Heirs of her Body, then the Heirs shall have it.* 1 *Rol.* 839. *l.* 32.

*To A. for Life, and if she marries after his Death and has an Heir of her Body, to such Heir and the Heirs of his Body; and if A. dies without Issue, to another*: *A.* has an Estate Tail. *Dub. Cro. El.* 313. *Cont. Mo.* 593. *Dub. Ow.* 148, *but it is badly reported.* 1 *Rol.* 839. *l.* 35. 2 *Rol.* 417. *l.* 25.

*To A. for Life, and after his Death to the Heir Male of his Body.* *R.* 1 *Vent.* 232. 2 *Rol.* 253. *l.* 50.

*To A. for Life, and after his Death to the Issue of his Body by a second Wife.* *Per Hale, but* 2 *J. cont.* 1 *Vent.* 225, *&c.* *R. in the Exchequer-Chamber.* 2 *Lev.* 58, 61. *Pol.* 111.

*To A. for Life, Remainder to the next Heir Male, and for Default of Heir Male, to B.* *R.* 1 *Vent.* 230.

*To A. for Life, and afterwards to the next Heir of his Body for Life, &c. Semb. cont.* 1 *Lev.* 257.

So a Devise *to A. and his Heirs, and if he dies without Issue, to B*; gives *A.* but an Estate Tail. *R. Cro. El.* 525. *R.* 2 *Cro.* 290. *Bridg.* 1. *Yel.* 209. *R.* 2 *Cro.* 22. 1 *Rol.* 835. *l.* 40. 836. *l.* 17. *J. R. Ray.* 453. *Le Com.* 592.

So, a Devise *to A. and his Heirs, and if his Sister survives him and his Heirs, to the Sister in Fee*: for it appears that it was intended *Heirs of his Body*, for he cannot be without an Heir general when his Sister survives. *R.* 2 *Cro.* 416. *Mo.* 853. 3 *Bul.* 195. 1 *Rol.* 836. *l.* 10. *Cont. per* 3 *J.* 2. *acc. Cro. Car.* 58. *Hut.* 85. *R. acc. T.* 12 *W.* 3. *B. R. inter Nottingham and Jennings*, 1 *Sal.* 233. (*Reported Comyns's Rep.* 82.)

So, a Devise *to A. and his Heirs, and for Want of Heirs of him, to B*; if it be proved that *B.* was his Cousin. *R.* 3 *Lev.* 71.

But a Devise *to A. and his Heirs, and if he dies without an Heir, to a Stranger*; *A.* has a Fee. *Agr.* 2 *Cro.* 416. *R. Cro. Car.* 58. *Dy.* 4. *a. Cont. Dy.* 4. *a. in Marg.* *R. acc.* 1 *Sal.* 238.

So, *to A. and his Heirs, and other Land to B. and his Heirs; and if B. dies without Issue, living A. to A. and if both die without Issue, to D.* 1 *Rol.* 839. *l.* 25.

So, *to A. and his Heirs, paying* 100 *l. and if he dies after the* 100 *l. paid, without Issue, to B.* is a Tail, and *B.* shall have the Remainder, tho' *A.* dies before Payment. *R. Ray.* 426.

So, if a Devise be *to A. and the Heirs of his Body, and after the Death of A. that his Son B. shall have it*; yet *A.* has an Estate Tail. *R. Mo.* 593. *Bend. pl.* 244. 1 *And.* 33.

Or, *to A. and the Heirs of his Body, and if he dies in the Life of B. then his Brother shall have it*; his Brother shall not have it, if *A.* dies in the Life of *B.* if he does not die without Issue. *R. Cro. Car.* 185.

So, if the Words be, *if A. dies before he has Issue during the Minority of B.* *R. Mo.* 127.

Or, *if he dies without Heirs before* 21, *ſo that the Eſtate falls to his Siſter. R.* 2 *Lev.* 162.

So, if a Deviſe be *to A.* (his younger Son) *and his Heirs, and if he dies without Heir, to his own right Heirs*; *A.* has but an Eſtate Tail. *R.* 1 *Sal.* 233.

So, if a Deviſe be *to A. and the Heirs of his Body by a ſecond Wife*; it ſhall be an Eſtate Tail, tho' he has a Wife living. 1 *Vent.* 228.

*To A. and the Heirs Male of her Body, provided that ſhe marries and has Iſſue Male by a Man of the Name of S.* ſhall be a ſpecial Tail to her and her Heirs Male by any of that Name. *R. Sal.* 570.

So, if a Deviſe be *to A. and his Heirs, and other Land to B. and his Heirs, and that the Survivor ſhall be Heir to the other if either of them dies without Iſſue*; *A.* has an Eſtate Tail. *R.* 2 *Cro.* 695.

So a Deviſe *to three Daughters, and if any of them die before the others, one ſhall be Heir to the other, and if the three Daughters die without Iſſue, to B.* the Daughters have an Eſtate Tail. *R.* 1 *Rol.* 836. *l.* 25. *R. Mo.* 864.

Or, *to two Sons for Life, and afterwards to their Sons and their Heirs, and that the one ſhall be Heir to the other, and if both die without Iſſue, to B.* the two Sons have Eſtates Tail. *R.* 1 *Rol.* 836. *l.* 40.

So, if a Man deviſes *that Land ſhall deſcend to his Son, and that his Executor ſhall take the Profits till his Son dies without Iſſue, and if he dies without Iſſue, that the Whole ſhall remain, &c.* The Son has an Eſtate Tail. *R.* 1 *Rol.* 839. *l.* 40.

So, if a Deviſe be, *to A. for Life, and afterwards to the Heirs Male of the Body of A. now living*; a Son of *A.* then living, takes in Tail. *R. Pol.* 457. 2 *Vent.* 313. 2 *Jon.* 100.

So, if a Deviſe be *to A. and the Heirs of his Body for* 500 *Years*; it ſhall be an Eſtate Tail, and not a Term. *R. Mo.* 773. *R.* 2 *Cro.* 62. 10 *Co.* 87, *Semb.* to be but a Term for Years, but no Reſolution. Cited to be a Term for Years. 1 *Rol.* 741. *l.* 47. 2 *Rol.* 424.

So, if a Deviſe be *to his Wife for Life, if ſhe do not marry*; *but if ſhe marries, to A. and the Heirs of his Body, Remainder to B. the ſecond Son in Tail, Remainder to C. the third Son in Tail*; *A.* the eldeſt Son has an Eſtate Tail, tho' the Wife does not marry: for the Intent appears to entail the Eſtate, and the Words ſhall be tranſpoſed for that Purpoſe. *R.* 3 *Lev.* 125. *Ray.* 428.

## (N. 6.) What not.

*Vide Ante,* (N. 4.)—*Poſt,* (N. 7.)

But, if an Eſtate be limited over after a Death without Iſſue upon a Contingency, this does not make an Eſtate Tail, but an Executory Deviſe; as, if a Man deviſes to *A. and his Heirs, and if he dies without Iſſue in the Life of B. to B. and his Heirs*; *A.* has a Fee, and *B.* only a Poſſibility. *R.* 1 *Rol.* 835. *l.* 45. *Bridg.* 3. 2 *Cro.* 592. *R. Dy.* 354. *a.*

So, if he deviſes *to A. and his Heirs, and if he dies before Marriage, or within Age and without Iſſue, then to B. R.* 1 *Rol.* 835. *l.* 50. *Hard.* 150.

If he deviſes *to his Wife, and if ſhe has Iſſue, to ſuch Iſſue, or if the Iſſue dies within Age, or before his Wife, or if ſhe has not Iſſue, to B.* the Wife takes only for Life. *R.* 2 *Cro.* 199. *Vide Poſt,* (N. 7.)

A Deviſe *to a Son for Life, and after his Death if he dies without Iſſue then living, to a Daughter*; the Son takes but for Life. 1 *Vent.* 231.

So a Deviſe *to A. for Life, and if he has Iſſue Male, to ſuch Iſſue Male and his Heirs*; *and if he dies without Iſſue Male, to B. and his Heirs*; the Iſſue has a Fee, and not an Eſtate Tail. *R.* 1 *Sal.* 224.

*To A. B. and C. and if they live unto full Age, and have Iſſue, then to them and their Heirs*; *and if they die without Iſſue, to B.* ſhall be a Fee, and not an Eſtate Tail. *R.* 2 *Leo.* 69. 3 *Leo.* 115.

So, a Deviſe to *A. and his Heirs, and if he dies before* 21 *and without Heirs of his Body, to B. Dub. Hard.* 148.

So a Deviſe *to A. and the Heirs Male of his Body, and if he dies without Heir of his Body, to B.* will be only a Special Tail to *A.* and not a Tail General. *R. Mo.* 13. 4 *Mod.* 318. *R. Dy.* 171. *a. Bend. pl.* 114. 1 *And.* 8.

So, if a Deviſe be *to A. and afterwards to his firſt Son and the Heirs of his Body, then to his* 2*d*, 3*d and other Sons in the ſame Manner, and for Default of ſuch Iſſue to B. &c.* and afterwards there is a *Memorandum, that A. do not alien from his Heirs Male, but that after Default of ſuch Iſſue, the Land ſhall remain to B.* This does not reſtrain the firſt Words; for the Son of *A.* ſhall take in Tail General. *R.* 3 *Mod.* 81. *Pol.* 657.

So, if a Deviſe be *to A. for Years, and afterwards to the Heirs Male of his Body, and for Default of ſuch Iſſue to B*; it ſhall not be an Eſtate Tail to *A.* by Implication, when by ſuch Conſtruction his expreſs Eſtate for Years will be merged. 1 *Sal.* 226.

So, if it was *to A. for Life, and afterwards to his firſt*, 2*d, and* 3*d Son in Tail Male; and if A. dies without Heir Male, to B.* it ſhall not be an Eſtate Tail in *A. R.* 1 *Sal.* 236. 2 *Ver.* 450, 546.

Or, *to his Siſters A. and B. for Life, and if they leave Iſſues, to them or the Survivors and their Iſſues, and if his Siſters die without Iſſue, or having Iſſue ſuch Iſſue ſhall die without Iſſue, to D.* is only an Eſtate for Life in the Siſters with Remainders in Tail to their Iſſues. *R.* 2 *Mod. Ca.* 382, 384. *

*Vide Poſt*, (N. 7.)

* [This Judgment was reverſed in the Houſe of Lords, tho' 9 Judges held it an Eſtate for Life, and 3 an Eſtate Tail. *Str. Rep.* 805. *Eq. Ca. Abr.* 185.]

## (N. 7.) What Words make an Eſtate only for Life.

But if a Man deviſes to another *indefinitè*, he takes only for Life. *Lat.* 40. *Pol.* 541.

So a Deviſe *to A. for Life, and afterwards to his three Daughters equally to be divided*; the Daughters take only for Life. 1 *Rol.* 833. *l.* 40. 834. *l.* 35. *R. Mo.* 594. *R.* 1 *Ver.* 65.

Or, *Part to A. for Life, the other Part to B. and after the Death of A. the Whole to B.* he takes only for Life. 1 *Rol.* 834. *l.* 20.

*Vide Ante*, (N. 6.)

So, a Deviſe *to two Sons and their Heirs, and if either dies before Marriage, or within Age and without Iſſue, the Whole to the Survivor*; the Survivor takes only for Life. 1 *Rol.* 836. *l.* 5.

So, a Deviſe *to three Daughters, and if one dies before the others, the one ſhall be Heir to the other*, gives but for Life. 1 *Rol.* 836. *l.* 35. *R. cont.* 1 *Rol.* 833. *l.* 45. *Vide Ante*, (N. 4.)

So, a Deviſe *to a Wife until B. attains* 24 *Years; and if B. dies, to A.* B. takes only for Life. *R.* 1 *Rol.* 836. *l.* 45.

So, if a Man deviſes *to A. for Life expreſly, Remainder to his Heir Male and the Heirs of his Body, A.* takes only for Life. *R.* 1 *Co.* 66. *b. Cro. El.* 453. *R. Mo.* 593.

So, *to Huſband and Wife for their Lives*, Remainder *to their Men-Children*, and they have a Son *in Eſſe. R.* 6 *Co.* 17.

Or, *to A. for Life*, Remainder *to the Sons of his Body.* 1 *Rol.* 837. *l.* 10. 1 *Vent.* 231.

Or, Remainder *to his Iſſue*, where he has two Sons *in Eſſe. Cont. Cro. El.* 742, 743. for the Remainder is void for the Uncertainty: *but Hale Semb. acc.* 1 *Vent.* 229.

So, *to A. for Life, and that he may diſpoſe to which Child he pleaſes. R.* 1 *Mod.* 189. *Lat.* 40. *R.* 3 *Leo.* 71. *Vide infra.*

So, if a Deviſe be *to A.* generally, *and to his Iſſues or Children*, where he has Children living; it will be but an Eſtate for Life. *Per Hale*, 1 *Vent.* 229.

To

*To A. and his eldeſt Iſſue Male*; tho' he has no Iſſue living. *R. Cro. El.* 40. 1 *And.* 132.

*To his Wife until his Daughter and Heir attain* 16, *and if the Daughter dies, B. ſhall be her Heir*; the Daughter takes only for Life. *Per* 2 *J.* 3 *Leo.* 55.

So, a Deviſe *to A. and his Heirs, and if he dies within Age, to all his Younger Children*; the Younger Children take only for Life. *R. Ca. Parl.* 210. *Skin.* 339, 563.

Tho' the Deviſe be of *his Share* in the New River; for *Share* imports his Part only, not his Eſtate or Intereſt in it. *R. & aff. in Parl. Ca. Parl.* 210. *Skin.* 339.

So, if a Deviſe be *to A. in Tail, and to B. and other Children other Lands in Tail, and if any Child dies within Age and not married, his Part ſhall go to the Survivors*; the Survivors take ſuch Part only for Life. *R.* 2 *Ver.* 388. *R.* 2 *Leo.* 129, 193. 3 *Leo.* 180. *Cro. El.* 52.

So, *to A. for Life only without Impeachment of Waſt, and if he dies leaving Iſſue, to ſuch Iſſue and his Heirs*, gives only an Eſtate for Life. *R.* 2 *Mod. Ca.* 261, 383.

Or, *to A. and B. for Life, &c. and if either leave Iſſue, to ſuch Iſſue, their Survivors or Survivor the Mother's Share and their reſpective Iſſues. R.* 2 *Mod. Ca.* 253, 256, 382. *but this was reverſed by the Peers,* 9 *J. acc.* 3 *cont. to the Judgment.* *

* [*Eq. Ca. Abr.* 185. *Str. Rep.* 805.]

So, a Deviſe *to A. for Life without Impeachment; and if he has Iſſue Male, to ſuch Iſſue Male and his Heirs; and if he ſhall not have Iſſue Male, Part to B. and his Heirs; and if A. dies without Iſſue Male, the other Part to C. and his Heirs*; *A.* takes only for Life; for the Words, *if A. dies without Iſſue Male*, are to be taken with Regard to the Words before, *viz. if he ſhall not have Iſſue Male*, and by the firſt Words the Intent appears that *A.* ſhall take only for Life. *R.* 3 *Lev.* 434. 1 *Sal.* 224.

Or, *to A. for Life, and if he has no Iſſue living at his Death, to B. and his Heirs, but if he has Iſſue at his Death, to the Heirs of A. R. Ray.* 28. 1 *Sid.* 47.

So, a Deviſe to *A. for Life*, Remainder *to his firſt Son in Tail*, Remainder *to his* 2*d Son in Tail, and ſo to all and every the Heirs Male of the Body of A. and their Heirs Male*, gives to *A.* only for Life. *R.* 2 *Lev.* 224.

So, a *Deviſe to A. for Life, and afterwards at his Diſpoſal to any of his Children then living*; he has only an Eſtate for Life, with Power to diſpoſe in Fee. *R.* 1 *Sal.* 240.

So, if a Man deviſes *to A. in perpetuum, habendum to him for Life. Lat.* 44. *But I do not ſee much a cure put there.*

Or, *the Fee of his Eſtate to A. for Life, or to A.* generally, with Remainder to another. *Lat.* 44. *Dy.* 357. *a. in Marg.*

Or, *the Fee to A. and after his Death to B.* who was *A.*'s Heir; *A.* takes for Life, Remainder to *B.* for Life, Remainder to *A.* in Fee. *R. Dy.* 357. *Bend. pl.* 293.

Or, *to A. in perpetuum*, Remainder *to B. in Fee*; *A.* takes only for Life. *Dy.* 357. *a. in Marg.*

So, if he deviſes *to A. paying out of the Profits ſo much*; it ſhall be only for Life. 2 *Ver.* 106. *Vide Ante*, (N. 4.)

Or, *paying for it ſo much per Ann.* which is leſs than the Yearly Value. *R. Dy.* 371. *b. D.* 6 *Co.* 16. *a.*

So, a Deviſe *to A. upon Condition, that if he ſells but to M. only, who is a joint Purchaſer with me, M. may enter: A.* has it only for Life. *R. Jon.* 212.

So a Deviſe *to his Wife for Life if ſhe does not marry*, gives an Eſtate *durante Viduitate. R. Ray.* 428.

A Deviſe *to A. during his Exile from his own Country*, gives an Eſtate for Life if he does not return, tho' his Stay here was voluntary. *R.* 2 *Jon.* 74. 1 *Vent.* 325. 2 *Lev.* 191. 2 *Mod.* 223.

But if a Deviſe be *to A. for Payment of Legacies and Debts of the Teſtator and afterwards to B. for Life, &c. A.* has not a Freehold, as he would have if it were by Deed, but a Chattel only; tho' the End of the Term be uncertain. *Per* 2 *J. Cro. El.* 315, 316. 8 *Co.* 96. *a. Semb. Al.* 45.

Or, a Deviſe *to A. during his Son's Minority. Cro. El.* 316.

Or, *till B. attain his Age of* 21 *Years.* 2 *Mod.* 289. *R. Dy.* 210. *R. Cro. El.* 252.

So a Deviſe *for Payment of Debts till B. attain the Age of* 21, ſhall be a Deviſe of a Term till that Time, tho' *B.* dies before ſuch Age. *R. Ca. Ch.* 114. *R.* 3 *Co.* 21.

So a Deviſe *to A. and the Heirs Males of his Body*, Remainder *to B. &c. and if A. has no Iſſue Male, but Daughters, that ſuch Daughters ſhall take the Profits till B. pay* 400*l.* *A.* dies, having no Son, but a Daughter; the Daughter ſhall have a Term till *B.* pays 400*l. Dub. Al.* 45.

A Deviſe *to A. at his Age of* 18 *Years, and that his Wife ſhall take the Profits, to her Uſe till A. attains* 18 *Years*, gives a Term for ſo many Years to the Wife, which her 2d Huſband ſhall have, and may aſſign. *R. Hutt.* 36.

## (N. 8.) What Words make an Eſtate Joint, or in Common.

If a Man deviſes Land *to A. and B. and their Heirs*, they are Joint-tenants by a Will, as well as if it was by Deed. *Bend. pl.* 145. *Vide Eſtates*, (K. 1, &c.)

So, if he deviſes *to his two Daughters and their Heirs*, they are Joint-tenants, and do not hold in Parcenary. *Dy.* 350. *b. Cro. El.* 431.

If he deviſes *to three, and that the Survivors ſhall be Heirs to the other*, they are Joint-tenants. *Cro. El.* 163. *Ow.* 25. *Vide* 3 *Leo.* 19.

If he deviſes *to the next of his Blood*, all in the ſame Degree in Conſanguinity take jointly. *Per.* 2 *J.* 2 *Rol.* 256. *la Jonest. 251. & my reference there.*

If he deviſes *to his Daughters A. and B. for Life, equally to be divided*, Remainder *to the Heirs of B.* they are Joint-tenants for Life. *R.* 6 *An. Eq. Ca.* 158. *

If he deviſes *to two, equally to be divided, habendum to them and the Survivor*, they are Joint-tenants. *Eq. Ca.* 158. * (*Vide* 2 *Rol.* 90. *l.* 5.) * 2d Part of 2 Mod. Ca.

So, if a Man deviſes Land to *A.* in Fee, and afterwards deviſes, by the ſame Will, the ſame Land to another in Fee; they are Joint-tenants. 3 *Leo.* 11. 2 *Cro.* 49. *R. Yel.* 210. *Cro. El.* 9. *Vide Ante*, (F. 2.)

So, if by the ſame Will, he afterwards deviſes a third Part of the ſame Land to another in Fee. 3 *Leo.* 11.

But if a Man deviſes Lands *to A. and B. and their Heirs equally to be divided*, they are Tenants in Common. *Cont.* till Diviſion made. *Dy.* 25. *a. in Marg. R.* 1 *Leo.* 258. *R. Mo.* 594. *R.* 3 *Co.* 39. *b. R. cont. Cro. El.* 330. *Acc.* 2 *Rol.* 89. *l.* 40. *Vide Chancery*, (3 V. 4.)—*Eſtates*, (K. 8.)

Or, *to A. and B. equally*, without more. *Dub. Dy.* 25. *a. Semb. Dy.* 25. *a. in Marg. Per Poph. cont. Cro. El.* 696. *R. cont.* 2 *And.* 17.

So, if a Deviſe be to *A. and B. and the Heirs of either of their Bodies*, they are Tenants in Common. *Semb. Dy.* 25. *a. in Marg.*

Or, *Heirs of every of their Bodies. Dy.* 326. *a.*

Or, *to A. and B. and if either dies, his Heir ſhall inherit.* 1 *Leo.* 258.

Or, *to three and their Heirs reſpectively.* 3 *Lev.* 373.

So a Deviſe *to two equally, and the Heirs of their Bodies.* *R. Cro. El.* 443, 696.

Or, *to two and their Heirs equally.* *Cro. El.* 444, 696.

So, *to two equally and their Heirs.* *R. Cro. El.* 443, 695. *Mo.* 558. 2 *Rol.* 89. *l.* 37.

So, *to two and their Heirs Part and Part like.* *Cro. El.* 444, 696. *R. Cro. Car.* 75.

So, *to A. and B. Children of his deceaſed Daughter, and his ſurviving Daughter, by equal Parts, viz. a Moiety to the Children, a Moiety to the ſurviving Daughter*; *A.* and *B.* are Tenants in Common of their Moiety. *R.* 3 *Mod.* 210.

So, *to two and the Heirs of their Bodies equally to be divided.* *Per* 2 *J. Dal.* 77.

*To his two Sons, to be equally divided*; they are Tenants in Common for Life. *R.* 1 *Bul.* 113.

*To his two Daughters, habendum to them in Common.* *Dal.* 77.

*To three Daughters in Tail, and that every of them be the other's Heir in equal Portions.* *R.* 1 *And.* 194. 1 *Bul.* 113.

*To two and the Survivor and his Heirs, equally to be divided*; they are Joint-tenants for Life, the Inheritance in Common. *R. Eq. Ca.* 160. *

* 2d Part of 2 *Mod. Ca.*

*To three Sons and their Heirs, and that the Lands be equally to my ſaid three Sons*; they are Tenants in Common. *R.* 2 *Rol.* 89. *l.* 50.

Yet, if a Man deviſes *to A. and B. equally to be divided, and to the Survivor*; they are Joint-tenants, and not in Common; for the Intent is expreſs, that the Survivor ſhall have it. *R.* 1 *Vent.* 227. 2 *Rol.* 90. *l.* 10.

But, *to A. and B. and their Heirs, and to the Survivor of them to be equally divided*, makes an Eſtate in Common. *R. per* 3 *J. Powell cont.* 3 *Lev.* 373. 1 *Sal.* 226, 7.

Yet, *to A. and B. equally to be divided, and to the Survivor and the Heirs of the Body of the Survivor*, makes a joint Eſtate. *R. Sti.* 211.

## (N. 9.) What Words make a Condition in a Will.

*Vide Condition,* (A. 4.)

Many Words make a Condition in a Will, which will not make a Condition in a Deed. *Co. L.* 236. *b.* *Vide Condition,* (A. 4.)

And, if the Remedy would be otherwiſe defeated, it ſhall be taken for a Condition: as, if a Man having two Daughters, and no Son, deviſes to one, *paying ſo much to her Siſter*; it will be a Condition, and the other Daughter ſhall enter for the Condition broken: for otherwiſe ſhe will be without Remedy. *R.* 1 *Rol.* 410. *l.* 50. *R.* 1 *Leo.* 174.

So, in all Caſes where there are Words of Condition, it ſhall be conſtrued as a Condition, if the Remedy is not thereby defeated: As, a Deviſe to the 2d Son, *upon Condition that he pays ſo much to the Daughters.* *R.* 2 *Cro.* 56. *R. Cart.* 225.

So, if a Deviſe be to *A.* for Life, Remainder to *B.* a Condition may be annexed to the Eſtate for Life, and ſhall not be defeated by the Remainder over. *R. Dy.* 127. *a.*

And if the Heir enters for the Condition broken, the Remainder is not thereby deſtroyed. *Dy.* 127. *b.*

So, if a Deviſe be *upon Condition to pay* 5*l. per Ann. to B. and if he does not pay, B. may diſtrain*; it ſhall be a Condition, tho' a Diſtreſs is added. *Bend. pl.* 281. *Dy.* 348. *Vide Poſt,* (N. 10.)

(N. 10.) What

## (N. 10.) What not.

But where the Intent does not appear to be to make a Condition, Words, which otherwiſe make a Condition, ſhall not be conſtrued as a Condition: As, if a Man deviſes Land to *B. paying a Rent of* 6*l. per Ann. to A. and if it be in Arrear, that A. ſhall diſtrain*; the Clauſe of Diſtreſs ſhews that the Word, *paying*, was not intended for a Condition. *Dub.* 8 *Jac.* 1 *Rol.* 411. *l.* 5. *Lane* 56. *Vide Ante*, (N. 9.)

If he deviſes Rent out of Land to his Younger Son, *for his Education in Literature*; it does not make a Condition, but he ſhall have the Rent tho' he be not educated in Literature. 2 *Lev.* 154.

If he deviſes Land to the Leſſee of the ſame Land, for a longer Term, *under the Covenants of the former Leaſe*; thoſe Words do not make a Condition, tho' the Covenants of the former Leaſe determine with the Leaſe. *R.* 2 *Lev.* 33. 1 *And.* 179. *Popb.* 8. *Cro. El.* 288.

So, if he deviſes Land to others, *upon Truſt*, *&c.* it ſhall not be a Condition, when he repoſes a Truſt in the Deviſee. *R. Cro. El.* 288. *Mo.* 594. *Popb.* 8. *Bend. pl.* 287.

So, if he deviſes to his Wife *paying* 30*l. to A. and that ſhe ſhall give Bond for Payment*; for the Bond was not neceſſary, if this was intended as Condition. *R.* 1 *And.* 50.

So, if he deviſes to *A.* and gives Legacies to be paid out of it; it is only a Truſt. *R.* 2 *Lev.* 249.

So, if by conſtruing the Words as a Condition the Remedy will be defeated, they ſhall not be taken as a Condition, but as a Limitation; as, if Land of the Nature of *Borough Engliſh* be deviſed to the eldeſt Son *paying* 40*s. to his other Children*: It ſhall be taken as a Limitation, and the other Children may enter for Non-payment: whereas if it ſhould be a Condition, the eldeſt Son himſelf, who was Heir, would take Advantage of it. *R. Cro. El.* 205. 3 *Co.* 21. *a.* 10 *Co.* 41. *a.* *R.* 2 *Cro.* 591.

So, if a Man deviſes Land to an elder Son, *upon Condition that he pay to two younger Sons, &c. and that they for Non-payment ſhall enter*. *R.* 1 *Rol.* 411. *l.* 28. *Cro. El.* 833, 920. *Mo.* 644. *Noy* 51.

So, if he deviſes to a younger Son, *paying ſo much to his Daughters, and if the younger Son dies before full Age, to the eldeſt Son, paying, &c. and if he does not pay, to the Daughters*; this ſhall be a Limitation. *R.* 1 *Rol.* 411. *l.* 50. *Cro. El.* 376. *Ow.* 112. *Gouldsb.* 154.

So, if a Deviſe be to *A.* and *B.* and their Heirs, *provided that if either of them dies, the Survivor ſhall ſell for Payment of Legacies*; it ſhall be a Direction, *&c.* and not a Condition, for then the Whole would be defeated. *R. Cart.* 3.

So, if a Deviſe be to *A.* for Life, or in Tail, *Provided that if A. marries without Conſent, &c. it ſhall remain to B.* it ſhall not be a Condition, but a conditional Limitation, upon which *B.* may enter if *A.* marries, *&c.* *R.* 2 *Lev.* 21. *Rey.* 236. 1 *Mod.* 86. 1 *Vent.* 202, 203.

So, in all Caſes where a Remainder is limited to another upon a Breach, or Failure of a Condition. *Per Periam*, 1 *Leo.* 283. *R.* 2 *Leo.* 38. *Ow.* 8, 55. 1 *Rol.* 411. *l.* 30, 45.

As, if a Deviſe be to *A.* his Heir, and other Land to *B. and if A. moleſt B. the Deviſe to him ſhall be void, and B. ſhall enter*; it ſhall be a Limitation, and not a Condition. *R.* 2 *Mod.* 7.

So, if a Deviſe be to a Woman, *Provided that ſhe marries and has Iſſue by one of the Name of S. and for Default, to B.* tho' the Woman takes an

Eſtate Tail, it ſhall be a conditional Limitation to *B.* if the Woman dies not having Iſſue by *S.* *R. Sal.* 570.

But a Deviſe for Life, or in Tail, upon an expreſs Condition, Remainder over to another, ſhall be taken as a Condition, tho' by Entry for the Condition broken, the Remainder will be deſtroyed: As, a Deviſe *to A. in Tail upon Condition that he do not alien, and for Default of Iſſue, Remainder to B. in Fee.* *Per* 2 *J.* 1 *Rol.* 412. *l.* 7.

If a Deviſe be to a Woman of a Rent-Charge for Life, *and if ſhe marries, that his Executor pay her* 100*l.* *and the Rent ſhall ceaſe, and return to the Executor*; it ſhall not ceaſe till the 100*l.* be paid. *Per* 2 *J.* 1 *Mod.* 273.

As to a Deviſe for Payment of Debts, and Legacies, *Vide Chancery*, (3 A. 3, &c.)

As to a Deviſe of Lands to be ſold, *Vide Chancery*, (3 A. 6, 7.)

## (N. 11.) Condition, how expounded.

The Words of a Condition ſhall be expounded ſtrictly: as, if a Deviſe be to *A. B.* and other Children ſeverally in Tail, *Provided that if any Child dies within Age and before Marriage, his Part ſhall go to the Survivors*; if *A.* dies before Marriage, and afterwards *B.* dies before Marriage; tho' his Part which accrued by the Will ſurvives, yet that Part which he had by the Death of *A.* does not go to the ſurviving Children. *R.* 2 *Ver.* 388.

## (N. 12.) What Words make an Eſtate by Implication.

So by a Will a Man may have an Eſtate by Implication, where ſuch Implication is neceſſary: As, if a Man deviſes a Houſe to his Son and Heir *after the Death of his Wife*; the Wife, by Implication, ſhall have it for her Life; for his Heir cannot take till her Death. *Vau.* 262, 3. *R. per all the J.* 13 *H.* 7. 17. *b.* *R. Mo.* 852, 3.

So, if he deviſes to *A.* his Son for Life, *and after the Death of A. and his Wife*, to the next Heir of *A.* the Wife of *A.* takes for Life. *R.* 1 *Leo.* 257.

So, if he deviſes *to all his Sons except A. and if all his Sons die without Iſſue, to B.* without ſaying, *except A.* he ſhall take in Tail before *B.* ſhall have it in Remainder. *Dal.* 44.

If a Deviſe be to *A.* till his Daughter and Heir attains 16, *and if the Daughter dies, B. ſhall have it*; the Daughter takes by Implication for Life. 3 *Leo.* 55.

So, if he has two Daughters his Coheirs, and deviſes to one *after the Death of his Wife*; the Wife takes by Implication for Life. R. 2 *Ver.* 723.

So, where the Implication is neceſſary, the Deviſee may take, tho' he takes another Thing or Land by expreſs Words in the ſame Will: as, if a Man deviſes *Goods to his Wife*, and *after the Death of his Wife* deviſes his Houſe to his Heir. *Vau.* 263.

## (N. 13.) What not.

But Lands do not paſs in a Will by a poſſible and conſtructive Implication, for the Heir ſhall not be diſinherited, but by a neceſſary Implication: as,

as, if a Man deviſes *that A. ſhall have his Lands after the Death of his Son and Daughter without Iſſue*; the Daughter does not take an Eſtate by Implication. *R. per* 3 *J. Vau.* 260, 261, 262, *&c. Vide Poſt*, (N. 22.)

So, a Deviſe to his Son *A.* of *Sofields*, *and alſo I will that my Bargains from N. my Son A. ſhall enjoy, and his Heirs for ever, and for Want of Heirs of his Body, to remain to my Heir*; *A.* ſhall not have an Eſtate Tail in *Sofields* by Implication. *Vau.* 262. *Cro. Car.* 368.

If *A.* leaſes Part of his Land to a Stranger, and deviſes *to his Wife his Land in the Occupation of the Leſſee, and after the Deceaſe of his Wife, wills that it, with all the Reſt of his Lands, ſhall remain to his younger Son*; the Wife does not take the Land, not leaſed, for Life. *Vau.* 266. *Mo.* 123.

Or, deviſes one Acre to his Wife *for Life*, and the other Acre, *after the Death of his Wife*, to a Stranger. *R.* 2 *Leo.* 226.

If *A.* has 100 Acres named *Jacks*, and lets a Houſe and 40 Acres to *B.* and afterwards deviſes *the Houſe and all Lands called Jacks in the Tenure of B. to his Wife, and all his Houſe and all other Lands named Jacks to B. after the Death of his Wife*; ſhe ſhall not have the Reſidue of *Jacks* for her Life. *R.* 2 *Leo.* 226. *Vide Ante*, (N. 3.)

If a Man deviſes to *A. for Life*, and afterwards *that the Land ſhall return, after the Death of him and his Wife, to B. and the Heirs of his Body*, who was not Heir to the Deviſor: The Wife takes Nothing, but his Heir ſhall have it during the Life of the Wife. *R.* 2 *Jon.* 98. 2 *Lev.* 207.

So, if a Term be deviſed *to his Son after the Death of his Wife*; it ſhall not be a Deviſe to the Wife, but goes to the Executors in the mean Time. *Per* 3 *J.* 2 *Cro.* 75.

So, if deviſed *to his Executor after the Death of his Wife*; for the Executor ſhall have it in the mean Time as Executor, tho' not as Legatory. *Per Poph. Yel. Cont.* 2 *Cro.* 75.

If he deviſes Underwood, as a Proviſion for younger Children, for 20 Years *after the Death of his Wife*; the Heir ſhall have it during the Life of the Wife. *R.* 1 *Ver.* 22.

If a Man, having no Son but two Daughters, deviſes Part of his Lands to his Wife for Life; and by another Part of his Will, deviſes all his Lands, *after the Death of his Wife*, to one Daughter and the Heirs of her Body; the Wife does not take an Eſtate by Implication in the Lands not limited to her for Life: for the Words, *after the Death of the Wife*, are ſatisfied by the Limitation of the Jointure-Lands after the Death of the Wife. *R. Eq.* 115. *Pr. Ch.* 439, 452.

So, if *A.* has 2 Daughters by different *Venters*, and deviſes a Moiety of his Land to his Wife for ſeven Years, and that the eldeſt Daughter ſhall enter into the other Moiety at her Marriage, *and if his Wife be enſeint with a Son, that the Son ſhall have the Land, if enſeint with a Daughter, that ſhe ſhall have her Share with his 2 other Daughters*; the Wife is not enſeint; ſhe enters into a Moiety, and within the 7 Years the eldeſt Daughter marries and enters into the other Moiety, and within the 7 Years the youngeſt Daughter dies without Iſſue; the eldeſt Daughter ſhall have only a Moiety and not three Parts, for the Heir of the whole Blood ſhall have the other Moiety. 1 *And.* 47. *Dy.* 342. *a. Vide Poſt*, (N. 22.)

So an Eſtate does not paſs in a Will by Implication, when by ſuch Conſtruction his Eſtate expreſly given would be deſtroyed. 1 *Sal.* 226. *Vide Ante*, (N. 6.)

So, no one ſhall be Tenant in Tail by Implication, when a Deviſe is made to him expreſly only for Life. 2 *Ver.* 451. *Eq. Ca.* 128.

## (N. 14.) What Words make Croſs-Remainders.

If a Man deviſes Lands to *divers Perſons and the Heirs of their Bodies, and if they all die without Iſſue of them or any of them*, Remainder to *A.* They all have Croſs-Remainders in the Part of each, ſo that *A.* ſhall take nothing in Remainder till each is dead without Iſſue. *R. Dy.* 303. *b. Adm. Hob.* 33.

So, if he deviſes *Black-acre* to *B.* and his Heirs, and *White-acre* to *A.* and his Heirs, *and that the Survivor ſhall be Heir to the other, if either of them dies without Iſſue*; *B.* and *A.* have Croſs-Remainders upon the Death of the one or the other without Iſſue. *R.* 2 *Cro.* 695.

So, if a Deviſe be *to A. B. and C. and if any of them dies before the others, the others ſhall be Heirs to him, equally to be divided, and if all die without Iſſue, to D. &c.* each has an Eſtate Tail. *R.* 2 *Cro.* 448. 3 *Leo.* 19.

So, if Deviſe be *to his two Daughters and their Heirs, and if they die without Iſſue, all the ſame Lands to B*; they are Croſs-Remainders to the Daughters; for the Intent appears, that *B.* ſhall not take till both die without Iſſue, and then the Whole Land. *R. Ray.* 453. 2 *Jon.* 172. *Pol.* 425, 434. *Skin.* 18.

## (N. 15.) What not.

But where each takes an expreſs and ſeveral Eſtate by the Deviſe, there ſhall not be Croſs-Remainders by Implication: as, if a Deviſe be of a Houſe to *A.* and his Heirs, another to *B.* and his Heirs, another to *C.* and his Heirs, *and if they all die without Iſſue, the Houſes ſhall remain to D.* If *A.* dies without Iſſue, his Houſe ſhall go immediately to *D.* and there ſhall be no Croſs-Remainder to the Survivors. *R. Per* 3 *J. Lea dub.* 2 *Cro.* 656.

So, if a Man deviſes to *A.* and *B.* for their Lives, Remainder to their two Sons and their Heirs equally, *and each to be Heir to the other*; *and if both die without Iſſue*, Remainder to *D.* If either dies without Iſſue, his Part ſhall go to *D. R. cont.* 4 *Leo.* 14. *R. acc.* 2 *Rol.* 416. *l.* 25. *but it was denied, Ray.* 455. *& Pol.* 434.

If he deviſes to *A.* his eldeſt Daughter and her Heirs a Houſe, another to *B.* his youngeſt Daughter and her Heirs, *and if ſhe dies before* 16, *living A. her Houſe ſhall be to A. and if A. dies without Iſſue, living B. her Houſe ſhall be to B. and if both die, having no Iſſue, all the Houſes ſhall be to others*; if *B.* dies after 16 without Iſſue, *A.* ſhall not have it, for they are not Croſs-Remainders. *R. per* 3 *J. Dy.* 330. *b.* (*Vide* 2 *Jon.* 173.)

If a Deviſe be *to his two Daughters and their Iſſue, and for Default of ſuch Iſſue to B.* they are not Croſs-Remainders to the Iſſues; for they have a Joint-Eſtate for Life, with ſeveral Inheritances; and upon Death, tho' the one has Iſſue, the Part of the other ſhall go to *B. R.* 2 *Ver.* 545, 6.

So, where ſeveral Deviſes are made to three or more, there never ſhall be Croſs-Remainders to the Survivors, without expreſs Words, for the Confuſion and Uncertainty. *Per Dod.* 2 *Cro.* 656. *Adm. Pol.* 434. *Skin.* 20.

As, if a Deviſe be to three Sons ſeverally in Tail, *and if any one dies without Iſſue, the Survivors ſhall be each others Heir. Dub. Sav.* 92.

## (N. 16.) What Words make an Executory Deviſe.

*Vide Springing Uſe, in Uſes,* (K. 7.)

If a Deviſe be to *A.* upon a Contingency or Condition precedent, *A.* takes Nothing, but by Way of Executory Deviſe when the Contingency, &c. happens; for in the mean Time he has only a Poſſibility: as, if a Man deviſes *to his Son in Fee, and if he dies in the Life of A. then to A. A.* ſhall take when

when the Son dies (if it be in his Life-time) by Executory Deviſe. *R.* 2 *Cro.* 590.

A Deviſe *to the eldeſt Son and his Heirs, and if he does not pay ſuch and ſuch Legacies, to the Legatees and their Heirs*; it takes Effect as to them as an Executory Deviſe, for his Heir does not take by the Deviſe. *R. Cro. El.* 920. *Vau.* 271.

So, if a Deviſe be to *A.* to commence at a Time after the Teſtator's Death, and there is no Deviſe to any one, ſo that it deſcends to the Heir in the mean Time; this takes Effect as an Executory Deviſe; for it cannot be a Remainder, there being no particular Eſtate on which it depends. *Vau.* 269.

As, if a Deviſe be to an Infant *en ventre ſa mere:* for till the Birth, the Deviſe does not take Effect. 2 *Mod.* 9. 1 *Sal.* 229. *Vide Ante*, (L.)

So a Deviſe, *to the Daughter of B. who ſhall marry a Norton within* 15 *Years*, is good, by Way of Executory Deviſe. *R. Ray.* 83.

So a Deviſe from *Michaelmas* for 15 Years, Remainder to *A.* and his Heirs; if the Deviſor dies before *Michaelmas*, the Remainder will be good, for it deſcends to the Heir in the mean Time. *R. Cro. El.* 878. *Noy* 43.

So, a Deviſe *till A. attains the Age of* 21 *Years, and then to A. and his Heirs, and if A. dies before, to the Heirs of the Body of B. as they ſhall attain their reſpective Ages of* 21 *Years*; if *A.* dies in the Life of *B.* yet the Heir of *B.* if he be of full Age, ſhall take at the Death of *B.* by Executory Deviſe. *Semb.* 2 *Mod.* 291.

So, if a Deviſe be to commence within the Compaſs of a Life, it will be good: as, if Huſband and Wife ſeiſed of a Copyhold and to the Heirs of the Huſband; he ſurrenders to the Uſe of his Will, and deviſes *to the Heirs of the Body of his Wife if they attain the Age of* 14 *Years*, Remainder to *A.* and the Wife has Iſſue by a 2d Huſband which attains the Age of 14; the Deviſe to him ſhall be good by Way of Executory Deviſe. *Per Twiſd. and Keeling, contra Morton and Wind. Ray.* 163. 1 *Lev.* 135.

A Deviſe of ſuch Land to *A.* the eldeſt Son, ſuch to *B.* and ſuch to *C. and if any of them die, his Eſtate ſhall remain to the others*, ſhall be a good Executory Deviſe; and the Part of the Eldeſt is not merged by Deſcent of the Reverſion. *R.* 2 *Lev.* 202.

So, if a Deviſe be to commence within the Compaſs of a Life or Lives. 1 *Sal.* 229.

Or, within 20, or 30 Years. 1 *Sal.* 229.

As, a Deviſe to *A.* for 15 Years, and afterwards to the firſt Son of *B. Ray.* 83. If the Teſtator ſhews, that he intends it *in futuro*, and not *in præſenti*. 1 *Sal.* 229.

## (N. 17.) What not.

But a Deviſe does not operate as an Executory Deviſe, but for Neceſſity: and therefore, where a Man deviſes to *A.* for Life, and if he dies without Iſſue *living at his Death*, to *B.* it ſhall be a contingent Remainder to *B.* and not an Executory Deviſe. *R. Ray.* 29. 1 *Sid.* 47. 1 *Lev.* 11.

Or, deviſes to another upon a Contingency, without any previous Eſtate to him; if there be a precedent Eſtate for Life to another, which is ſufficient to ſupport the contingent Remainder, it ſhall never be conſtrued an Executory Deviſe, but a Remainder. *Per Hale*, 2 *Sand.* 388.

So, it ſhall not be an Executory Deviſe, where there is an expreſs Deviſe of the ſame Land precedent. *Per Wind. Ray.* 164. if there be a particular Eſtate precedent. *D.* 4 *Mod.* 284. *Skin.* 431.

As,

As, if a Deviſe be *to A. for Life without Impeachment, and if he has Iſſue Male, to ſuch Iſſue Male and his Heirs; if he has not, to B. and his Heirs*; here being a Freehold, the Deviſe to the Iſſue Male ſhall not be executory, but a Contingent Remainder. *R.* 1 *Sal.* 224.

So a Deviſe by Words *de præſenti* ſhall not be taken as an Executory Deviſe: as, *I give the Inheritance to the Heir of A.* and *A.* is living at the Death of the Teſtator. 1 *Sal.* 226.

So, if a Man deviſes to *A. for Years*, and afterwards gives *the Inheritance to the Heirs Males of A.* for it is a Deviſe *per verba de præſenti*, and limited as a Remainder. *R.* 1 *Sal.* 226.

Or, *to A. for* 10 *Years, and then to the firſt Son of A. and the Heirs Male of his Body. R.* 1 *Sal.* 229.

So an Executory Deviſe, after the Death of any one without Iſſue, is void. 1 *Lev.* 136. *Acc.* 1 *Sal.* 229.. *Cont. per Vau.* 270.

As, if *A.* be Tenant in Tail, the Reverſion to *B.* in Fee; a Deviſe by *B.* to another *when A. dies without Iſſue*, is void. *Semb.* 1 *Sal.* 233.

So, if the Contingency upon which the Executory Deviſe is to commence becomes impoſſible, the Deviſe will be void. *R.* 2 *Mod. Ca.* 347.

When a Remainder ſhall be contingent, or veſted, *Vide Eſtates*, (B. 16, 17.)

## (N. 18.) What Words give a preſent Eſtate.

*Vide Chancery*, (3 Y. 8.) *Vide Poſt*, (N. 19.)

If a Man deviſes to *A. until B. attains his Age of* 21 *Years, and then to B. and his Heirs*; *B.* has an Eſtate in Remainder veſted in him immediately by the Deviſe: for *A.* had it for Years till *B.* ſhall attain his full Age, and therefore, if *B.* dies before his full Age, his Heir ſhall take. *R.* 2 *Mod.* 290.

So, if a Deviſe be *to A. for* 50 *Years if he lives ſo long, and after the Term to the Heirs Males of the Body of A. Remainder to B.* the Limitation to the Heirs Males of the Body of *A.* being void, the Remainder to *B.* veſts immediately. *R.* 1 *Sal.* 226.

So, if a Deviſe be *to A. and before he comes to* 21 *Years of Age, to my Executor*; *A.* has a preſent Intereſt, and if he dies within Age, his Adminiſtrator ſhall have it. *Per* 3 *J.* 2 *Bul.* 123.

If a Deviſe be *to A.* of Goods *to be delivered at his Age of* 21 *Years, and if he dies before* 21, *then to B.* if he dies before, *B.* ſhall have them immediately. *R. Bend.* 35. 1 *And.* 33.

So, if a Deviſe cannot take Effect as a Remainder, it ſhall be a preſent Intereſt: as, a Deviſe *to A. for Years, Remainder to B. in Fee*; *B.* takes the Freehold immediately. *R. Cro. El.* 878. *Noy* 43.

If Chattels Perſonal are deviſed *to A. for Life, and if he has a Son, to the Son*; *if A. has no Son, or ſuch Son dies without Iſſue, to B. for Life, and then to C. his Son*; *A.* has no Son, and *B.* dies in the Life of the Teſtator: the Intereſt veſts in *C. R. Ca. Ch.* 130.

If a Deviſe be to *A.* for Life, and there is no ſuch Perſon *in eſſe*, Remainder to *B.* he ſhall take immediately. *Pl. Com.* 414. *a.*

So, if a Deviſe be *to A. for Life*, or *in Tail, and after his Death without Iſſue to B.* and *A.* dies in the Life of the Teſtator, having Iſſue; yet *B.* ſhall take immediately. *R. Cro. El.* 423. *R. Dy.* 122. *a.*

So, if *A.* refuſes. *Cro. El.* 423. *Pl. Com.* 414. 1 *Co.* 101. *a.*

So, if *A.* be incapable, as, a Monk, *&c. Perk. Deviſe* 566, 567. *Dy.* 127. *b.*

So, if a Deviſe be *to A. and B. and their Heirs*, and *A.* dies before the Teſtator, *B.* ſhall have the Whole. *R.* 1 *Sal.* 238.

What

What Words give an Eſtate *in futuro*, *Vide Ante*, (N. 16, 17. *Executory Deviſe.*)—*Vide Poſt*, (N. 19.)

## (N. 19.) When in Reverſion, or Remainder.

By the *St.* 32 *H.* 8. 1. and 34 (or 34 & 35) *H.* 8. 5. All Perſons who have Lands, *&c.* in Reverſion, or Remainder, may deviſe, *&c.* *Vide Ante*, (N. 18.)

If a Leſſor diſſeiſes a Leſſee for Life, and makes a Leaſe to *A.* for the Life of the firſt Leſſee, Remainder to *B.* in Fee, and the firſt Leſſee enters; yet *B.* may deviſe his Remainder.

But the Deviſe of a Remaindet, after an Eſtate in Fee, will be void, as well as a Grant. *Vide Eſtates.*

## When a Deviſe commences upon a Limitation;

*Vide Limitation*, in *Condition*, (T.)

## (N. 20.) When upon a Contingency.

If a Deviſe upon a Contingency be in the Disjunctive, if the one or the other happens, the Eſtate commences: as, if a Deviſe be to *A.* and *B.* and other Children, *and if any of the Children die within Age, or not married, his Share ſhall go to the Survivors*; if *A.* dies before Marriage, tho' he be of full Age, his Part goes to the Survivors. *R.* 2 *Ver.* 388. *Vide Executory Deviſe, Ante*, (N. 16, 17.) —*Contingent Remainder, in Eſtates*, (B. 16, 17.)—*Vide Condition*, (B. 3.)

If a Deviſe be to *A.* for Life, *and afterwards to the Child of which A. is enſeint, and if ſuch Child dies within Age, then a third Part to A. her Executors and Adminiſtrators*; *A.* ſhall take a third Part, tho' ſhe was not enſeint. *R. Eq. Ca.* 74.

But if the Disjunctive be annexed to the Act which ought to happen before the Commencement of the Eſtate, the Eſtate does not commence, tho' one Part happens: as, if a Deviſe be to *A.* and his Heirs, *and if he dies before he attains* 21 *or has Iſſue, to B.* If *A.* attains 21 Years, tho' he afterwards dies without Iſſue, *B.* ſhall not have it. *R. Pol.* 645.

## (N. 21.) Regard ſhall be had to the Teſtator's Death.

If a Deviſe be to *A.* in Tail, *Remainder to the next of his Name*, and at the Death of the Teſtator he has a Siſter unmarried, who was the next of his Name; ſhe ſhall take, tho' ſhe was married at the Death of *A.* without Iſſue, by which ſhe loſt her Name. *R. Cro. El.* 532, 576. *Vide Chancery*, (3 Y. 17.)

But if the Siſter married before the Death of the Teſtator, by which ſhe loſt her Name; ſhe ſhall not take, but his next Heir Male. *R. Cro. El.* 532, 576.

But the Death of the Teſtator ſhall not be regarded in Excluſion of the Intent at the Time of the Will made: as, if a Man deviſes all his Lands in *A.* and afterwards purchaſes more Lands there, theſe do not paſs. *Pl. Com.* 343. *b.* *Vide Ante*, (M.)

If a Deviſe be to *the Wife of B.* who dies, and his Wife marries *D.* and then the Teſtator dies; the Wife of *D.* ſhall take. *Pl. Com.* 344. *b.*

Or, *to A. Dean of P. and his Chapter*, and a new Dean is made in the Teſtator's Life-time; the Dean and Chapter ſhall take. *Pl. Com.* 344. *b.*

If a Deviſe be *to the next of his Blood*; the next at the Time of the Will ſhall take. *Per* 2 *J.* 2 *Rol.* 256.

If a Man deviſes to *Francis Carter* a Houſe in *B.* and all other Meſſuages, Lands, Tenements, and Hereditaments in *B.* and elſewhere, to *James La-*

*mas* and his Heirs; if *Francis Carter* dies in the Life of the Teſtator, *Lames* ſhall not take the Houſe deviſed to him. *R. P.* 11 *Geo. in C. B. inter Wright* and *Hall.*

## (N. 22.) Words ſhall not be ſtrained to diſinherit an Heir at Law.

There ſhall not be a ſtrained Conſtruction of Words to diſinherit an Heir; and therefore whatever is not expreſly diſpoſed of deſcends to the Heir: as, if a Man deviſes *the Demeſnes of a Manor to his Wife for Life, and the Services to her for* 15 *Years, and the whole Manor after the Death of his Wife to a Stranger*; the Heir ſhall have the Services after the 15 Years during the Life of the Wife. *R. Mo.* 7. *Dal.* 5. *Vide Implication, Ante,* (N. 12, 13.)—*Vide Chancery,* (3 P. 3.)

If a Man has 2 Daughters by different *Venters*, and deviſes a *Moiety to his Wife for ſeven Years, and that his eldeſt Daughter ſhall enter into the other Moiety at her Marriage, and if his Wife be enſeint with a Son he ſhall have the Land, if with a Daughter ſhe, with his two other Daughters, ſhall have the Whole*, and dies, having two Daughters, and his Wife not enſeint; ſhe enters into a Moiety and within the 7 Years the eldeſt Daughter marries and enters into the other Moiety, and within the 7 Years the youngeſt Daughter dies without Iſſue; the Uncle of the youngeſt Daughter, being Heir of the whole Blood, ſhall have a full Moiety; for the Words, that *the eldeſt ſhall enter at her Marriage* do not import a Deviſe of a Moiety to her, but denote when ſhe ſhall have Poſſeſſion of it. *R. Bend. pl.* 278. *Dy.* 342. *a. Vide* 1 *And* 47. *Vide Ante,* (N. 13.)

If a Deviſe be *to an Heir until B. attains* 21, *and then to him*; the Heir ſhall have a Fee until the Contingency happens. *R.* 1 *Leo.* 101.

But ſuch a Conſtruction ought to be made of a Will, that all the Words may ſtand, if it be poſſible. *Lat.* 39.

So, where the Words are not ambiguous, the Conſtruction ſhall not be in Favour of the Heir. 2 *Ver.* 340.

## (N. 23.) An Exception ſhall be expounded liberally.

So an Exception ſhall be liberally expounded: as, if a Deviſe be *to A. in Tail, to B. in Tail, and all the remaining Part of his Eſtate to D. except that which he has given to A. and B.* the Exception extends to the Fee of the Eſtate deviſed to *A.* and *B.* *R.* 3 *Mod.* 228.

If he deviſes *all his Goods and Furniture in ſuch a Houſe to his Wife for Life, and afterwards to his eldeſt Son, except the Pictures*; the Pictures hung up as Furniture at the Time of the Will, or afterwards, and Pictures in Boxes, do not paſs to the Wife. *R.* 2 *Ver.* 538.

But where a Deviſe was to Charitable Uſes of Lands, *except the Wood, Underwood, and Timber-trees*; the Soil of the Wood is not within the Exception. *R.* 1 *Ch. R.* 134, 5.

## (N. 24.) The Expoſition ſhall be according to the Intent of the Teſtator.

So a Conſtruction ſhall be made, if it may be, to ſupport the Intent of the Teſtator.

As, if *A.* having Lands in four Counties, deviſes thoſe in three Counties to his Wife in Part, and Part to others, and afterwards deviſes all generally to his Wife for the Benefit of his Son; this ſhall be extended only to the Land in the fourth County. *R. Dal.* 63.

If he deviſes Land to *B. upon Condition that he pay 5l. per Ann. to D.* and afterwards gives ſeveral Legacies, and then ſays, *that for Non-payment of the Legacies, they may diſtrain, and if no Diſtreſs, re-enter, &c.* this does not extend to the *5l. per Ann. Semb. Pol.* 404.

If *A.* has Iſſue *B.* and *C.* and *B.* has Iſſue a Son and *C.* a Daughter only, and *A.* deviſes to *B.* for Life, then to his Son in Tail, and for Default of ſuch Iſſue to the Daughter in Fee, paying ſuch Sums, *Provided if C. have Iſſue a Son my Lands ſhall go to ſuch Son and his Heirs, paying as the Daughter ought to pay*; *C.* has Iſſue a Son; the Remainder only, in Default of Iſſue of the Son of *B.* goes to the Son of *C.* by Force of the Proviſo. *R. 2 Mod.* 293.

But if the Intent be contrary to the Rules of Law, it ſhall be void. 2 *And.* 10.

And therefore, ſuch an Eſtate cannot be made by a Will, which cannot be created by Deed. 2 *And.* 11.

## (N. 25.) When explained by Averment.

So Words of a Will, applicable to two Perſons, or Things, may be aſcertained by Averment: as, if a Deviſe be to *John* his Son, and he has two Sons of that Name. *(Vide Eq. Ca. Abr.* 212, 231, 2. 5 *Co.* 68. 2 *P. W.* 137.) *Vide Chancery*, (3 A. 2.)

But, generally, an Averment ſhall not be allowed to expound the Words of a Will: as, if *A.* deviſes *to his Youngeſt Son in Tail, afterwards to the Heirs of the Body of his eldeſt Son*, Remainder *to his Daughter in Fee*, and the youngeſt dies without Iſſue in the Life of his elder Brother; Evidence ſhall not be admitted to prove, that it was the Intent that the Daughter ſhould not take till both the Sons died without Iſſue. *R. 2 Leo.* 70.

## (O) When a Man takes by a Deviſe.

IF there be a Feoffment *to the Intent to perform his Will*, and after he deviſes the ſame Land to *B.* in Fee; *B.* takes by the Will, and not by the Feoffment. *Co. L.* 271. *b.*

So, if there be a Feoffment to the Uſes of his Will. *R. 1 Vent.* 194.

But if the Feoffment be to *B. for ſuch Eſtate as ſhall be limited by his Will*; *B.* takes by the Feoffment, and the Will is only a Direction of the Uſes. *Co. L.* 271. *b. R. Cro. El.* 878. 2 *Cro.* 31. 6 *Co.* 17. *b. Mo.* 567.

Or, *to ſuch Uſes as ſhall be declared by his Will. R. 1 Vent.* 194. *R. Jon.* 8.

So, if the Feoffment be to the Uſe of the Feoffee and his Heirs, *Provided that he may diſpoſe by his Will. 1 Vent.* 194.

So, if the Deviſe would not be effectual for the Whole if he took by the Will, he ſhall take by the Feoffment. *Semb. Cro. El.* 878.

## (P) Pleading of a Deviſe.

IF a Man pleaded a Deviſe after the *St.* 32 & 34 *H.* 8. and before the *St.* 12 *Car.* 2. 24. which changed Tenures to Common *Socage*, he ought to ſhew that the Land was holden in *Socage*; for it would not be otherwiſe intended. *Cont. per* 3 *J. ad Menſam, but Sand. acc. Dy.* 329. *b.* But it is ſaid *in Marg.* to be often adjudged *cont. Temp. Eliz.* And this Caſe was denied,

nied, *Mo.* 279. *Semb. cont.* 1 *Sid.* 265. *D. acc. per Dyer, Pl. Com.* 376. *a. R. acc.* 1 *And.* 246. 4 *Le.* 195.

So, if he pleaded a Devise before the *St.* 32 *H.* 8. he ought to shew a Custom to devise. *Bend. pl.* 145.

So, if he pleaded a Devise of a Rent-charge, he ought to plead Seisin of Land of Socage-Tenure. *R. Gr. El.* 667. *Dy.* 329. *b. in Marg.*

So, if a Devise was found by Verdict it ought to have been found to be holden in *Socage*: for otherwise it should not be intended. *R. Mo.* 279. *Dy.* 329. *b. Marg.* *But it was R. cont.* 24 *Car.* 2 *Rol.* 697. *l.* 20. *and* 1651. *ibid. l.* 25.

So, if a Man pleads a Devise it is not sufficient to say, *that he was seised* generally; but he ought to shew, of what Estate, that the Court may judge that he could devise. *R. Gr. El.* 530.

So, if a Man pleads a Devise of Land, he ought to plead, that it was in Writing. *Per Holt, Sal.* 519.

So he ought to shew that the Devisor died seised; for otherwise the Will does not operate. *Dy.* 143. *a.* 1 *Mod.* 217.

But he need not say that he was of full Age, *&c.* for that is not required by the Purview of the Act, but by a separate Proviso. *Pl. Com.* 276. *a.*

Concerning *Devise Vide* also *Chancery*, (3 A. 1, &c.—3 Y. 1, &c.)—*London*, (N. 4.)

# DIGNITARY.

*Vide Ecclesiastical Persons*, (C. 16.)

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# DIGNITY.

## (A) Dignity.

*As to the Dignity of the King, Vide Roy*, (D.)

THE King is the Fountain of all Dignity and Honour in the Kingdom. *Vide in Prerogative*, (D. 31.)

And therefore, the King may create a new Dignity, which was not before. *R.* 12 *Co.* 81.

But he cannot create another King in any Part of his Kingdom. 4 *Inst.* 287.

If a foreign King creates any Person Noble, he shall not be allowed his Dignity by the Law here. 7 *Co.* 16. *a.*

Tho' our King by his Letters of Safe-Conduct names him by his Title of *Duke, Earl, &c.* 7 *Co.* 16. *a.*

Or, makes him a Denizen by the same Title; or, if he be naturalized by Parliament. *Dal. Nobi.* 4.

(B) Co

## (B) To what Perſons it belongs.

### (B. 1.) To the Nobility, &c.

(B. 1.) As, The Prince.

PERSONS of Dignity are Noble, or under the Degree of Nobility; or the ſuperior, and inferior Nobility. 2 *Inſt.* 583, 4.
As to the Prince, *Vide Roy*, (G.)

(B. 2.) Duke.

The firſt Duke made in *England* was *Edward the Black Prince*, created 11 *Ed.* 3. 2 *Inſt.* 5. 9 *Co.* 49. *a.*

(B. 3.) Marquis.

The firſt *Marquis* was *Robert de Vere* Earl of *Oxford*, created 8 *R.* 2. Marquis of *Dablin* in *Ireland*. 2 *Inſt.* 5.

(B. 4.) Earl.

The *Earl* had the Cuſtody of the County anciently. *Co. L.* 168.
And it was the Supreme Name of Dignity before 11 *Ed.* 3. 9 *Co.* 49. *a.* *Sal.* 509.
He was always created by Letters Patent. *Sal.* 509. *Skin.* 518.
And ought to be Earl of ſome Place, within or out of the Kingdom. *Skin.* 519.
But there is no need that there be ſuch a Place in *England*, or elſewhere. *Sal.* 510. *Skin.* 519.

(B. 5.) Viſcount.

The firſt *Viſcount* was *John Beaumont*, created Viſcount *Beaumont* 18 *H.* 6. 2 *Inſt.* 5. *Pal.* 565.
And he ſhall have a Seat among the Peers in Parliament. *R.* 21 *H.* 6. *Pal.* 565.

(B. 6.) Baron.

All the Nobles are *Barons* of the Realm; for a Superior Degree of Nobility does not extinguiſh the Inferior. 2 *Inſt.* 6.
A Baron originally was created by Tenure. *Sal.* 509. and afterwards by Writ, or Patent. *Vide Poſt*, (C. 1, &c.)

(B. 7.) Knight.

Perſons under the Degree of Nobility, or who are ſometimes called the inferior Nobility, are *Knights*, *Eſquires*, and *Gentlemen*. 2 *Inſt.* 666.
*Knights* are Baronets, Knights of the Garter, of the *Bath*, Bannerets, and Batchelors. 2 *Inſt.* 666.
A Baronet only has a Dignity deſcendible; who was firſt created 9 *Jac.* to him and the Heirs Males of his Body. 2 *Inſt.* 666.
And if he be created a Baronet to him and the Heirs Males of his Body, without Reference to ſome Place; it will be a Fee-ſimple conditional, and forfeitable for Felony. *R.* 12 *Co.* 81.
If he be created a Baronet of ſuch a Place; it will be an Eſtate Tail within the *St. W.* 2. *R.* 12 *Co.* 81.
But the King cannot create a Dignity higher than a Baronet, and under a Baron. *R.* 12 *Co.* 81.
If the Fees for a Knight made are not paid, an Action lies for them. 1 *Rol.* 87.
The Fees by an Order of King *James* 1. were ſettled at 20 *l.* for Knights made by him. 1 *Rol.* 87.
Who was compellable to be a Knight, *Vide in Homage*, (G. 4.)

(B. 8.) Eſquire.

An *Eſquire* is he, *qui in Clypeis Gentilitiis honoris inſignia gerit*; and it is not reputed a Dignity. 2 *Inſt.* 667. *Vide Spel. Gloſſ. verbo, Armiger.*

All Nobles of another Kingdom, who are not Knights, by the Common Law, are reputed Eſquires here. 2 *Inſt.* 667.

So, all the Sons of a Peer of this Realm. 2 *Inſt.* 667.

So, the eldeſt Son of a Knight. 2 *Inſt.* 667.

So, the eldeſt Son of ſuch eldeſt Son, or of the Son of a Peer, for ever. *Semb. Dod. Nob.* 144.

So a Man may be an Eſquire by Creation, with a Collar of *SS.* and Spurs of Silver, or by Patent. *Dod. Nob.* 144.

So, the firſt-born Son of ſuch an Eſquire for ever. *Dod. Nob.* 144.

So, by being choſen Eſquire to the Body of the Prince. *Dod. Nob.* 144.

By Attendance upon the King's Coronation in ſome Employment. *Dod. Nob.* 144, 5.

By Employment in any ſuperior Office of the Kingdom. *Dod. Nob.* 145.

(B. 9.) Gentleman. *Vide Addition, in Abatement,* (F. 19, &c. 26.)

A *Gentleman* is he, *qui inſignia Gentilicia gerit*; and differs little from an Eſquire. 2 *Inſt.* 667, 8.

And he may be by his Birth, by Deeds of Arms by a Herald, by Office, or Reputation. *Dod. Nob.* 147.

A Gentleman by his Birth does not loſe his Title, tho' he goes to the Plough, or be reduced to Poverty. *Dod. Nob.* 149.

Or be bound Apprentice to a Merchant, or other Trade. *Dod. Nob.* 150.

But a Gentleman by his Office ceaſes to be ſuch, if he loſes his Office. *Dod. Nob.* 150.

*Vide Abatement,* (E. 20.—F. 19.—H. 44.)

## (C) How one may be intitled, or how created.

### (C. 1.) By Preſcription.

A Man may have a Title to Nobility by Preſcription. *Co. L.* 16. *a.*

### (C. 2.) By Tenure.

So he may be a Baron by Tenure. *Sal.* 509. *Skin.* 434, 436.

And ſuch Barony goes with the Land to the Heir Male, or otherwiſe, as the Land is limited. *Skin.* 437.

### (C. 3.) By Writ.

So he may be created by Writ: as, if the King by Writ of Summons requires any to come to Parliament, and upon that he ſits in the Houſe of Peers; he is a Baron to him and his Heirs. *Co. L.* 16. *b.*

Tho' there are not Words of Inheritance in the Writ. *Co. L.* 16. *b.*

And this was the antient Way of Creation. *Co. L.* 16. *b.*

And upon ſuch Creation by Writ, if a Baron ſummoned to Parliament dies, having Iſſue a Daughter, ſuch Daughter ſhall have the Barony. *Skin.* 436.

So, if he has Iſſue ſeveral Daughters, and all but one die without Iſſue, the Iſſue of ſuch Daughter has a Right to have a Summons to Parliament. *R. Skin.* 441.

If

If he has ſeveral Daughters, the Dignity is ſuſpended till all but one die without Iſſue: or the King may grant it to any of the Daughters at his Pleaſure. *Skin.* 436.

But he is not a Baron of the Realm, if he dies before the Return of the Writ. *Co. L.* 16. *b.* *R.* 12 *Co.* 70.

If he never ſits in Parliament by Force of the Writ. *Co. L.* 16. *b.*

So a Barony may be limited in the Writ, to him and the Heirs Males of his Body. 7 *Co.* 33. *b.*

## (C. 4.) By Patent.

So he may be created Duke, Marquis, Earl, Viſcount, Baron, or Baronet by Letters Patent. *Co. L.* 16. *b.*

And the firſt Creation by Patent was 10 *Oct.* 11 *R.* 2. *Co. L.* 16. *b.*

And by Patent the Dignity may be limited to him and his Heirs, or, the Heirs of his Body, or, Heirs Male of his Body. *Co. L.* 16.

So it may be limited only for Life. *Co. L.* 16. *b.*

If a Patent under the Great Seal of *England* creates one an Earl, he ſhall be a Peer of *England*. *Sal.* 510. *Skin.* 519.

Tho' a Peer of *Ireland* may be created under the Great Seal, by expreſs Words. *Sal.* 510. *Skin.* 519, 520.

But the King cannot make any one a Peer for Years only; for it would go to his Executor, or Adminiſtrator. *Co. L.* 16. *b.*

So, if the King, by Letters of Safe Conduct, Denization, &c. to a noble Foreigner, names him by his Title; this does not make him a Peer of the Realm, or Noble, here. 7 *Co.* 16. *a*, *Calvin.*

## (C. 5.) By Parliament.)

So he may be made Noble by Act of Parliament.

And the Dignity may be entailed by Parliament: as, the Earldom of *Oxford*. *Jon.* 103.

But if a Noble Foreigner be naturalized by Parliament; that does not make him Noble here. *Dod. Nob.* 4.

Or, if a Duke, Baron, &c. of *Scotland*, or another Kingdom, has a Son and Heir born in *England*, by which he is a natural Subject; he will not be Noble here. 7 *Co.* 15, *Calvin.*

## (C. 6.) By Marriage.

So a Dignity may be obtained by Marriage: as, if a Duke, Marquis, Earl, &c. marries; the Wife ſhall be Noble for her Life. *Co. L.* 16. *b.*

And if a Woman marries a Duke, who dies, and afterwards ſhe marries a Baron; yet ſhe continues a Ducheſs. *Co. L.* 16. *b.* 2 *Inſt.* 50.

If a Duke, Earl, &c. who has the Dignity in Fee, has not a Son, but ſeveral Daughters; the King may confer the Dignity on him who marries any of the Daughters, as he pleaſes. 12 *Co.* 111. *Vide Parceners*, (A. 2.)

But if a Woman, Noble by Marriage, afterwards takes a Huſband under the Degree of Nobility; ſhe ſhall loſe her Nobility. *Co. L.* 16. *b.* 2 *Inſt.* 50. *Dy.* 79. *b.* *Ow.* 81.

Otherwiſe, if a Woman, Noble by Deſcent, takes a Huſband not Noble. *Co. L.* 16. *b.* 2 *Inſt.* 50. *Per Brook*, *Ow.* 82.

Or, if a Queen Dowager takes a Huſband, Noble or not Noble: for ſhe by her ſubſequent Marriage ſhall not loſe her Dignity. 2 *Inſt.* 50.

Yet

Yet if a Woman, Noble by Deſcent, marries to an inferior Degree of Nobility, as, if the Daughter of a Duke marries a Baron, ſhe ſhall have Precedence only as a Baroneſs. *Ow.* 82.

## (D) How tried.

IF there be a Diſpute, whether a Man be a Peer of the Realm generally, it ſhall be tried by the Record of Parliament. *Co. L.* 16. *b.* 7 *Co.* 15, *Calvin.* 9 *Co.* 31. *a.* 49. *a.* 19 *Aſſ. pl.* 24.

But where he claims by Deſcent, tho' he ought to produce the Patent of Creation, it ſhall be tried by the Country. *Skin.* 520.

If any one becomes Heir to a Barony in Fee, and be not ſummoned to Parliament, he may ſue to the King by a Petition of Right. *R. Skin.* 432.

## (E) How forfeited.

IF a Nobleman be attainted for Treaſon or Felony, he forfeits his Dignity, and he and his Poſterity become ignoble. *Co. L.* 41. *a.* 391. *b.* *Ow.* 82.

But a Dignity or Nobility cannot be extinguiſhed, except by Act of Parliament (if it be not forfeited.) *Skin.* 437.

It cannot be aliened, or transferred to another. *Jon.* 123. *Ca. Parl.* 4. *R.* that a Grant of it without the King's Licence was void. 4 *Inſt.* 126, 7.

It cannot be ſurrendered by Deed, or Fine to the King. *R. Ca. Parl.* 1, 11.

It cannot be taken away by the Order of the Lords in Parliament. *R. Sal.* 511.

It ſhall not be extinguiſhed by the Acceptance of another Dignity, or Title. *Skin.* 437.

So it ſhall not be loſt by Nonclaim: for the Statutes of Limitations do not extend to it. *R. Skin.* 437.

## (F) The Privileges of Peers.

*See 2 Whitelocke on Writ for Parl.t 265.*

### (F. 1.) To be tried by Peers.

*Vide Parliament,* (L. 16, &c.)

ALL the Barons of Parliament ſhall be tried for Treaſon, Felony, Miſprifion, or as Acceſſory, at the Suit of the King by their Peers. By *Magn. Chart.* 9 *H.* 3. 29. *non ſuper eum ibimus, &c. niſi per legale Judicium Parium ſuorum.* 2 *Inſt* 49. 9 *Co.* 30. *b.* *Sta.* 152, 153.

So, all of the Nobility, who are Peers of Parliament.

So by the Common Law, which is now affirmed by the *St.* 20 *H.* 6. 9. all Ducheſſes, Counteſſes, and Baroneſſes, who are noble by Deſcent, Creation, or Marriage. 2 *Inſt.* 50.

And Marchioneſſes and Viſcounteſſes, *&c.* tho' not named by the *St.* 20 *H.* 6 9. 2 *Inſt.* 50.

So the Queen Conſort, or Dowager. 2 *Inſt.* 50.

And a Peer cannot waive his Trial by his Peers. *Kelk.* 56. *in Marg.* *Mo.* 621. 1 *Tr.* 265. 2 *Ruſh.* 94. *Vide Poſt,* (F. 2.)

But the Nobles of another Kingdom, or who are not Barons of our Parliament, ſhall not be tried by the Peers of Parliament. By the Common

Law, confirmed by Parliament 4 *Ed.* 3. 2 *Inſt.* 50. 7 *Co.* 15, 16, *Calvin.* 3 *Inſt.* 30.

Nor a Woman, Noble by Marriage, who has loſt her Dignity by a ſubſequent Marriage under the Degree of Nobility. 2 *Inſt.* 50. *Vide Ante*, (C. 6.)

Nor an Archbiſhop, or Biſhop; for they are not Peers inheritable. *Seld. J. P.* if he be not accuſed in Parliament. 4. *Seld.* 3 *Vol.* 2 *p.* 1541. 3 *Inſt.* 30. for they make Proxies after Plea, and withdraw themſelves. 3 *Inſt.* 31.

So a Baron of Parliament ſhall not be tried by his Peers in an Appeal, which is the Suit of the Party. 2 *Inſt.* 49. 9 *Co.* 30. *b.* *Sta. P. C.* 152. *a.* 10 *Ed.* 4. 6. *b.* 3 *Inſt.* 30.

Nor in *Præmunire*, or other Caſe, except Treaſon, Felony, or Miſpriſion. 1 *Bul.* 198. 3 *Inſt.* 30.

So he may be indicted for Treaſon, Felony, or Miſpriſion by a Jury. 2 *Inſt.* 49.

And upon ſuch Indictment in *B. R.* he may plead his Pardon there. 2 *Inſt.* 49. *R.* 1 *Rol.* 297.

And if he does not appear, Proceſs iſſues there, and he may be outlawed upon it, *per Judicium Coronatorum.* 2 *Inſt.* 49.

So the Indictment ſhall be before *B. R.* or Commiſſioners appointed, by a Jury of the County where the Offence was committed. 3 *Inſt.* 28.

But he cannot confeſs the Indictment, or plead not guilty in *B. R.* 2 *Inſt.* 49.

And before Plea, the King ſhall make an High Steward, who may arraign him, or tranſmit the Indictment by *Certiorari* to Parliament. *R. Hut.* 131.

By the Commiſſion to the High Steward, the Indictment is recited, and Power given to him to receive the Indictment, and to proceed *ſecundum Legem Angliæ*; and a Command to the Peers to attend, and to the Lieutenant of the Tower to bring the Priſoner, and a *Certiorari* of equal Date with the Commiſſion, or later, to remove the Indictment before him *indilatè*. 3 *Inſt.* 28. *Vide* 1 *H.* 4. 1.

(F. 2.) The Manner of Trial.

At the Trial of a Peer, the King conſtitutes an High Steward *hâc vice.* 3 *Inſt.* 28. 1 *H.* 4. 1. *a.* *De quo Vide Officer*, (E. 5.)

The High Steward by Warrant requires which Serjeant at Arms he pleaſes to ſummon the Peers named in the Warrant, to be at *Weſtminſter* on ſuch a Day, to try, *&c.* *Mo.* 621. *Sta.* 152. 3 *Inſt.* 28.

So, by Warrant, he requires the Lieutenant of the Tower to bring his Priſoner. *Mo.* 621. 1 *H.* 4. 1. *a.* 3 *Inſt.* 28.

And, by Letter, the Judges are required to be preſent, who attend in Scarlet, *&c.* *Keil.* 54.

And a Writ goes out of *Chancery* to the Lieutenant of the Tower, to bring the Priſoner as the High Steward ſhall appoint. 3 *Inſt.* 28.

And Peers, in Commiſſion to find the Indictment, may be upon the Trial. *R. Keil.* 58.

A Precept by the High Steward to the Serjeant to ſummon *tot & tales Proceres, &c. per quos, &c.* names none particularly. 3 *Inſt.* 28.

But they ought to be 12 or more. 3 *Inſt.* 28, 30.

At the Day appointed the Commiſſion is read. *Mo.* 621. *Sta.* 152. 3 *Inſt.* 28.

Then the Peers are named according to the Summons returned. *Mo.* 621. 3 *Inſt.* 28, 29.

The Priſoner cannot challenge any Peer. *R.* 1 *Tr.* 366. 3 *Inſt.* 27. 2 *Ruſh.* 94. *Vide infra.*

The Peers, who appear, take their Places according to their Dignity. *Mo.* 621. 3 *Inſt.* 28, 29. *Sta.* 152.

And afterwards the Priſoner is brought to the Bar. *Mo.* 621. *Sta.* 152. 3 *Inſt.* 29.

And then the Indictment is read. *Mo.* 621. 3 *Inſt.* 29. *Sta.* 152.

And the Priſoner arraigned. 3 *Inſt.* 29. *Sta.* 152.

Afterwards the Priſoner ought to plead, otherwiſe he ſtands mute. *R.* 1 *Tr.* 366. *Vide infra.*

If he pleads *Not Guilty*, Iſſue is joined upon it. 3 *Inſt.* 29. *Vide infra.*

And there needs no Counſel for this; but if he pleads Matter of Law, Counſel ſhall be aſſigned him. 3 *Inſt.* 29. 2 *Ruſh.* 94. 1 *Tr.* 366.

If the Priſoner does not appear, the ſame Proceſs ſhall be againſt him as upon another Indictment, till he be outlawed. 3 *Inſt.* 31.

After the Indictment read, the Peer ought to plead; otherwiſe Judgment ſhall be againſt him. *Keil.* 57. 1 *Tr.* 366.

If he pleads *Not Guilty*, he puts himſelf upon his Peers. *Mo.* 621. *Sta.* 152. 3 *Inſt.* 29. *Vide ſupra.*

And he cannot waive the Trial by his Peers, or challenge any of them. *Mo.* 621. *Keil.* 56. 3 *Inſt.* 30. *Vide Parliament*, (L. 17.) *Vide Ante*, (F. 1.) *Vide ſupra.*

And he need not have Time allowed for pleading, tho' the Indictment be long. *Keil.* 56.

If he does not plead, but confeſſes the Indictment, Judgment ſhall be immediately againſt him. 1 *H.* 4. 1. *a.*

After Plea, the King's Serjeants and Attorny immediately give Evidence againſt him; and then the Priſoner ſhall anſwer to it. *Sta.* 152. 3 *Inſt.* 29.

Then the Conſtable with his Priſoner retires, while the Peers conſult of their Verdict. *Sta.* 152. *b.* 3 *Inſt.* 29.

The Judges may be aſked their Opinions in any Point: for they are preſent for the Aſſiſtance of the Court. *Keil.* 54.

And therefore, if the High Steward aſks a Queſtion, they ought to anſwer tho' it be in the Abſence of the Priſoner. *Keil.* 54.

So they may deliver their Opinion upon a Queſtion propoſed in Point of Law, in the Abſence of the Priſoner. *Dub. Keil.* 54.

But they ought not to deliver their Opinion, before the Trial of a Criminal Caſe triable before them. 3 *Inſt.* 29.

If the Peers, after Evidence, being in Conſult, deſire to ſpeak with any of the Judges; with Aſſent of the High Steward he may go to them. *Keil.* 54.

But the Judges ought not to deliver any Opinion in Point of Law, but in open Court. *Keil.* 54. in the Preſence of the Priſoner. 3 *Inſt.* 29.

And they ought not to ſpeak with the King's Counſel privately upon it. 3 *Inſt.* 30.

And therefore, if the Peers in conſulting of their Verdict, deſire to ſpeak with a Judge, and then aſk his Opinion in Law, he ought to inform them, that he cannot deliver a private Opinion, nor without Conference with the other Judges. *R. Keil.* 54.

If the Peers in conſulting, *&c.* deſire to ſpeak with the High Steward; he cannot ſpeak with them but in the Preſence of the Priſoner. *R. Keil.* 57. 3 *Inſt.* 29.

The Peers may eat and drink, after Evidence given, before Verdict. 1 *Tr.* 366. 2 *Ruſh.* 95.

But the Peers ought not to ſeparate or adjourn after Evidence, before their Verdict. 1 *Tr.* 366. 3 *Inſt.* 30. 2 *Ruſh.* 95.

After a major Part of the Peers in Conſult are agreed of their Verdict, they again take their Places, and the High Steward aſks of the loweſt, and ſo of each

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of ye 3. Inſt. & Hegh. the rule is applied to trials in y^e court of the high steward. But trials in parliament seem to be within y^e reason of the rule. accordingly in Lord Mohun's case the judges gave their opinions in open court before the privy lords. see stat. Tri. 3^d. edit. vol. 1. p. 537. However in Lord Lovat's case the judges were consulted & gave their opinions in the chamber of parliament & not in open court. Inſt. 13 K. the same thing was done in the case of the Duke of Kingston. In Lord Lovat's trial some points of law arose & were debated in the house of parliament; but whether the judges were consulted there, is not mentioned in the printed trial.

each *ſeriatim*, whether the Priſoner be *Guilty*, who anſwers without Oath, *Guilty*, or, *Not Guilty* upon his Honour. *Sta.* 152. *b.* 10 *Ed.* 4. 6. *b.* 1 *H.* 4. 1. *a.* 3 *Inſt.* 30.

Then the High Steward aſks for the Priſoner, and declares the Verdict to him, and gives Judgment accordingly. *Sta.* 152. *b.* for the Verdict is given in the Abſence of the Priſoner. 3 *Inſt.* 30.

If they do not agree, the Court may adjourn to the next Day: tho' it is not uſual. *Keil.* 57. 3 *Inſt.* 31.

And in ſuch Caſe the Peers need not continue together, as other Juries; but may retire to their Houſes. *R. Keil.* 57.

## (F. 3.) As to Oath, Arreſt, &c.

So a Peer, generally, ſhall not be upon Oath in Trials before them, or when he anſwers in any Court, as a Defendant. *Jon.* 154. *Vide Sereement*, (C.)

So he ſhall not be put upon a Jury, or Affiſe. *Jon.* 153. 9 *Co.* 49. *a.* *Reg.* 179. *b.* 48 *Aſſ.* 6.

And if he be, he ſhall have a Writ for his Diſcharge. *Reg.* 179. *b.* *R.* 48 *Ed.* 3. 30. *b.* *Dy.* 314. *b.*

So an Attachment does not go againſt a Peer for a Contempt in diſobeying an Injunction, &c. *Seld.* 3 *Vol.* 2 *p.* 1543.

So a Peereſs, by Marriage or Deſcent, ſhall not be arreſted; for a *Capias* does not lie againſt her. *R.* 6 *Co.* 52. *b.*

So a Peer ſhall not be arreſted in Debt or Treſpaſs; for a *Capias* does not lie againſt him. 9 *Co.* 49. *a.* 6 *Co.* 52, 3. *Hob.* 61.

And, if arreſted by a Proceſs which names him a Peer, a *Superſedeas* ſhall go. *Sal.* 512. 4 *Inſt.* 126. *F. N. B.* 247. *C.*

So, if he has ſat in Parliament as a Peer. *Sal.* 512.

But if he never ſat as a Peer, nor be named ſo, he ought to plead. *Sal.* 512, for there ſhall not be a *Superſedeas*; but perhaps he may have a Writ to the Juſtices, mentioned *F. N. B.* 247, if he be a Peer.

So a Peer ſhall be in Execution upon a Statute-Staple, Statute-Merchant, or Recognizance. *R.* 2 *Leo.* 173, 4.

So Execution ſhall be againſt his Body upon a Judgment. *Dub.* 2 *Leo.* 173.

So a *Capias* lies againſt a Peer in an *Homine replegiando*. *Hob.* 61.

So a Peer ſhall find Bail upon a *Habeas Corpus* to remove a Cauſe. *R.* 2 *Leo.* 173.

So a *Capias* lies againſt a Peer for an Offence to the King *immediatè*: as, for Felony. *Seld.* 3 *Vol.* 2 *p.* 1546.

So, for a *Reſcous* made, &c. *Seld.* 3 *Vol.* 2 *p.* 1546.

So a *Capias* lies againſt an Earl, Baron, &c. in *Ireland*.

And againſt a Biſhop of *Ireland*; tho' he is a Biſhop of the Univerſal Church. *Pal.* 345.

# DIOCESE.

*Vide Pariſh*, (A.)—*Probibition*, (F. 9.)

DIS-

# DISABILITY.

*Vide Abatement*, (E. 1, &c.)—*Ability*.—*Alien*, (C. 4.)—*Capacity*.—*Chancery*, (I. 1.)—*Condition*, (M. 2, &c.)—*Popery*, (B. 7, &c.)

# DISCEIT.

*Vide Deceipt*.

## Writ of Diſceit.

*Vide Ancient Demeſne*, (E. 2.)

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# DISCENT.

## (A) When a Man takes by Deſcent.

EVERY Eſtate of Inheritance which a Man has, he takes by Deſcent, or Purchaſe. *Co. L.* 13. *b.*

In all Caſes, where a Man derives the Eſtate from his Anceſtor, he takes by Deſcent: As, if Tenant in Fee-ſimple, or Tail, dies, his Heir takes by Deſcent. *Co. L.* 13. *b.*

So, where the Anceſtor has an Eſtate for Life, and afterwards a Limitation is to his right Heirs, the Heir takes by Deſcent: As, if a Feoffment be to the Uſe of *A.* for Life, Remainder to *B.* in Tail, Remainder to the right Heirs of *A*; the Heir of *A.* takes by Deſcent. *Co. L.* 22. *b.* 319. *b.* *R.* 2 *Co.* 91. *b.* *Mo.* 284, 719. *Pol.* 56. 1 *Rol.* 627. *l.* 20, 25. 2 *Rol.* 417. *l.* 10.

So, if it be to *A.* and *B.* for Life, Remainder to the right Heirs of him who dies firſt, and *A.* dies; his Heir takes by Deſcent, tho' the Remainder could not veſt before the Death of *A.* *Co. L.* 378. *b.* *D. cont. Lit.* 258.

So, if it be to the Uſe of *A.* for Years, if he ſo long lives, and afterwards to *B.* for Life, and afterwards to the right Heirs of *A.* *Cont. Mo.* 719. *Poph.* 3. 2 *And.* 138. *R. Acc.* 3 *Lev.* 406. *Dub.* 4 *Mod.* 384, *but the Court inclined Cont. and in the Caſe*, 3 *Lev.* 406. the Limitation was to *A.* and his Heirs. *Cont. Co. L.* 319. *b.* *Semb. Acc.* where it was limited to Truſtees for the Life of *A.* *Eq. R.* 21.

So, tho' the Eſtate for Life in the Anceſtor be created by Act in Law: As, if a Feoffment be to the Uſe of another for Life, Remainder to *A.* in Tail, Remainder to the right Heirs of *B.* the Feoffor; Becauſe *B.* cannot have an Heir during his Life, and by the *St.* 27 *H.* 8. the Poſſeſſion is executed to the Uſe, the Law creates an Uſe to *B.* for his Life, till the future Uſe comes *in Eſſe*; and therefore the Heir takes by Deſcent. *Co. L.* 22. *b.* *Mo.* 284.

Or,

Or, if a Man covenants to ſtand ſeiſed to the Uſe of *A.* in Tail, and afterwards to the Heirs Male of himſelf; the Law creates an Uſe in the Covenantor for his Life, and his Heir Male takes by Deſcent. *R.* 2 *Mod.* 211. 4 *Mod.* 382.

Or, to the Uſe of his Heirs Males by a 2d Wife; he has immediately an Eſtate Tail, and the Son by the ſecond Wife ſhall take by Deſcent. *R.* 2 *Lev.* 79. 1 *Mod.* 121, 159.

So, if a Man upon a Conveyance limits a void Remainder, by which the Reverſion reſults to himſelf, his Heir takes by Deſcent: As, if a Man demiſes for Life, Remainder to his right Heirs, the Remainder is void; for he cannot make his Heir a Purchaſer, where he does not part with the whole Eſtate out of himſelf. *Co. L.* 22. *b.*

So, if a Fine *Sur Grant & Render* be to a Huſband and Wife, and the right Heirs of the Huſband (where the Huſband was ſole ſeiſed before) who render to *A.* for the Life of the Huſband, Remainder to *B.* for Life, Remainder to the right Heirs of the Huſband; the Remainder to the right Heirs is void: for he cannot make his right Heir a Purchaſer, where he does not part with the whole Eſtate out of himſelf; and therefore the Reverſion was in the Huſband. 2 *Rol.* 414. *l.* 45.

So, if by Bargain and Sale, Land be conveyed to *A.* and his Heirs, and *A.* dies before Enrollment; the Heir takes by Deſcent. *Vide Bargain and Sale*, (B. 9.)

So, if a Man covenants to ſtand ſeiſed to the Uſe of *B.* and his Heirs, upon a Contingency, and *B.* dies before, and then the Contingency happens; the Uſe riſes to the Heir, who ſhall take *quaſi* by Deſcent. 2 *Rol.* 794. *l.* 45. *R. Pal.* 59, 66.

If *A.* covenants to ſtand ſeiſed to the Uſe of *B.* in Tail, and for Default of Iſſue, to his Heirs Male; his younger Son, after the Death of the Elder leaving a Daughter only, takes by Deſcent. *R.* 2 *Mod.* 211.

If *A.* limits an Eſtate to his Wife for Life, and afterwards by a ſubſequent Deed limits it to the Heirs of the Body of his Wife; ſhe takes an Eſtate Tail: for theſe Eſtates are conſolidated, and the Heir of the Wife does not take by Purchaſe. *Dub.* 2 *Ver.* 489.

So, if a Deviſe be to an Heir of the ſame Eſtate which he would have by Deſcent; he ſhall take by Deſcent. *Vide Deviſe*, (K.)

So, if a Deviſe be to *A.* for Life, Remainder to the Heir of the Deviſor in Fee; the Heir takes by Deſcent, tho' it be a Remainder: for it makes no Alteration in the Nature of his Eſtate. *R.* 1 *Rol.* 626. *l.* 35.

So, if a Deviſe be to *A.* till his Heir attains the Age of 24, and then to him in Fee, and that his Wife ſhall have a third Part for her Life; and if he dies before 24, to his Wife for Life; and if his Heir has no Iſſue, to his Daughter in Tail. 1 *Rol.* 626. *l.* 45.

So, if a Copyhold be ſurrendered to the Uſe of his Will, and then he deviſes to *A.* for Life, and afterwards to the Heir of his Body for ever; the Heir of *A.* takes a Fee by Deſcent. *R.* 1 *Rol.* 627. *l.* 5.

So, if a Deviſe be to *A.* his younger Son in Tail, and if he dies without Heir, to his own right Heirs; the eldeſt Son takes by Deſcent. *R.* 1 *Sal.* 233, 4.

## (B) Where, by Purchaſe.

BUT a Man takes by Purchaſe where the Eſtate firſt veſts in him; and he does not derive it from his Anceſtor. *(Vide Co. L.* 3. *b.* 1 *Co.* 95. *Shelly.)*

As, if Land be limited to *A.* for Life, Remainder to the right Heirs of *B.* his right Heir takes the Remainder by Purchaſe. 1 *Rol.* 627. *l.* 15. *R.* 3 *Leo.* 14.

So, if a Feoffment be to *B.* to the Uſe of *A.* in Tail, and afterwards to the right Heirs of *B.* For it was a Remainder, and not a Reverſion, tho' *B.* was the Feoffee. *Semb. Co. L.* 22. *b.*

So, if a Deviſe be to *A.* for Life, and after his Death to his next Heir Male and the Heirs Males of his Body; his Son takes the Remainder by Purchaſe. *R.* 1 *Co.* 66. *b.*

So, where a Man takes by executory Deviſe, he takes by Purchaſe. *Vide Deviſe*, (N. 16, 17.)

So, a Deviſe to *A.* for the Life of *B.* and then to the Heirs Males of *B.* then living; the Son of *B.* then living, being Godſon to the Teſtator, ſhall take, for it is *Deſignatio Perſonæ. R. per* 3 *J. in B. R. which was reverſed in the Exch. Chamber and afterwards affirmed in Parliament.* *Ray.* 330. 2 *Jon.* 99. 1 *Vent.* 334.

So, if a Copyhold be ſurrendered to *A.* and his Heirs, and *A.* dies before Admittance, by which his Heir is admitted; he takes by Purchaſe, for there was nothing in *A.* who never was admitted. *R.* 1 *Rol.* 627. *l.* 30.

So, if an Eſtate be limited to *B. pur auter vie*, Remainder to *A.* for Life, Remainder to the right Heirs of *B*; if he dies before *A.* the Remainder is not veſted in *B.* tho' he has a Freehold: for if he dies before *A.* it ſhall never take Effect. *Lit.* 258.

So, if it be limited to *A.* and *B.* for their joint Lives, and afterwards to *C.* for Life, Remainder to the right Heirs of *B.* 2 *Rol.* 418. *l.* 10.

## (C) To whom a Deſcent ſhall be.

### (C. 1.) To the next in Blood.

IF a Man dies ſeiſed in Fee, the Deſcent ſhall be to his eldeſt Son.
If he has no Son, to all his Daughters in Co-parcenary.
If he has no Iſſue, to his eldeſt Brother. *Lit. S.* 5.
If he has no Brother, to all his Siſters.
If he has no Iſſue, nor Brother, nor Siſter; to his next collateral Couſin of the whole Blood. *Lit. S.* 2.

But Land ſhall not deſcend to the next in Blood, if there be any nearer *jure Repreſentationis:* As, if *B.* has Iſſue *C.* and *D.* and *C.* dies in the Life of his Uncle, and then the Uncle dies; his Eſtate ſhall deſcend to the Son of *C.* and not to *D.* tho' he is neareſt in Blood. *Co. L.* 10. *b.* 3 *Co.* 41. *a.*

So all the Poſterity of *C.* ſhall inherit before *D.* or his Iſſue. *Co. L.* 10. *b.*

So, by the Jewiſh Law. *Seld de Succ.*

So Land ſhall not deſcend to the Father, or other lineal Anceſtor, tho' he be neareſt in Blood; but ſhall deſcend to the Uncle, or other collateral Couſin. *Lit. S.* 3.

And this is a Maxim peculiar to the Common Law. *Lib. Rub. cited Co. L.* 11. *a. cont. Acc.* 1 *Vent.* 414, 415.

Yet if Land deſcends from a Son to his Uncle, after the Death of the Uncle without Iſſue, it may deſcend from him to the Father. *Lit. S.* 3.

So likewiſe if an Eſtate be granted to a Son for Life, Remainder to the next of his Blood; the Remainder ſhall be to the Father, and not to the Uncle. *Co. L.* 10. *b.*

So,

So, if an Eſtate be limited to *A.* for Life, Remainder to his next of Blood in Fee; *A.* has no Iſſue, his Brother has Iſſue *B.* and *C.* and dies; and *B.* alſo has Iſſue, and dies, and then the Death of *A.* happens; the Remainder veſts in *C.* for he is the neareſt of Blood to *A.* tho' the Iſſue of *B.* ſhall be his Heir. *Co. L.* 10. *b.*

So, if a Man dies ſeiſed of Land, (his Wife being *privement enſeint*) and his Land deſcends to his Daughter, Brother, Uncle, *&c.* and afterwards a Son is born, or other nearer Heir; the after-born Iſſue ſhall enter upon the Daughter, Brother, Uncle, or other remoter Heir. *Co. L.* 11. *b.* (C. 2.) Tho' he be poſthumous.

So, if Land deſcends to a Daughter, and another Daughter is afterwards born; ſhe ſhall be Parcener with her Siſter. *Co. L.* 11. *b.*

So, if *A.* has Iſſue *B.* and *C.* and *B.* dies, his Wife *privement enſeint* with a Son, then *A.* ſuffers a Recovery to him and the Heirs of his Body, and dies before Execution, and *C.* enters; the Son of *B.* born afterwards ſhall enter upon him: for *C.* takes by Deſcent, and the Execution relates to the Recovery, which was in the Life of *A.* *R.* 1 *Co.* 98, 106. *Shelly.*

So, if Huſband and Wife ſeiſed in Tail general, have Iſſue a Daughter; then the Huſband dies, his Wife *privement enſeint*, and the Wife aliens, upon which the Daughter enters by *St.* 11 *H.* 7. 20. A Son afterwards born ſhall enter upon her: for, by the Statute, the Daughter was in *quaſi* by Deſcent. 3 *Co.* 61. *b.*

So, if a Condition be broken in the Life of the Feoffor, who dies before Entry; and afterwards his Daughter, as Heir, enters; a Son born afterwards ſhall enter upon her. 1 *Co.* 99. *a.*

So, if a Man, intitled to enter upon Conſent given to a Raviſher, dies before Entry. 1 *Co.* 99. *a.*

Or, to enter by Force of a Remainder. 1 *Co.* 99. *a.*

But if an Eſtate veſts in a Daughter, Brother, *&c.* by Purchaſe, and not by Deſcent; a nearer Heir, born afterwards, ſhall not deveſt it: As, if a Remainder be limited to the right Heirs of *B.* who dies, his Wife *privement enſeint*, and then the Remainder happens. 9 *H.* 7. 25. *a.* 1 *Co.* 95. *a.* *R.* 1 *Sal.* 227. 2 *Ver.* 579. *Skin.* 430. *R. cont. in Parl.* 4 *Mod.* 282. 3 *Lev.* 408.

So, if it veſts upon a Contingency. *Cro. Car.* 412.

So, if a Brother, *&c.* by his Entry be remitted. *R.* 3 *Leo.* 2.

Or, upon a Forfeiture for a Condition broken, Conſent to a Raviſher, *&c.* 5 *Ed.* 4. 6. *a.* 1 *Co.* 95. *a.*

So, if a Daughter, *&c.* pays Money, or performs a Condition, whereby the Eſtate is preſerved. *R.* 1 *Co.* 95. *a.* 99. *a.* *R. Cro. Car.* 87.

And now by the *St.* 10 & 11 *W.* 3. 16. A Son or Daughter born after the Death of the Parent ſhall take in the ſame Manner as if born in his Life-time, tho' no Eſtate be limited to preſerve contingent Remainders, *&c.*

## (C. 3.) To the moſt worthy.

So it is a Rule, that a Deſcent ſhall be to the moſt worthy in Blood: And therefore, if a Man ſeiſed of Land has Iſſue ſeveral Sons and Daughters; the Male Iſſue ſhall be preferred, for the Male is the moſt worthy. *Vide Co. L.* 14.

If there are ſeveral Sons; the Deſcent, by the Common Law, ſhall be to the eldeſt.

If there be not any Iſſue, but a Man has ſeveral Brothers; the Deſcent ſhall be to the eldeſt Brother. *Lit. S.* 5.

So, if a Man purchaſes Land, and dies; all of the Blood of the Part of his Father ſhall inherit before thoſe of the Blood of the Part of his Mother: for the Blood of his Father is the moſt worthy. *Lit. S.* 4.

And the Father has alſo two Bloods in him; the Blood of his Father, and of his Mother. *Co. L.* 12. *a.*

And all of the Blood of the Father of the Part of his Father, ſhall inherit firſt; and then thoſe of the Blood of the Father of the Part of his Mother. *Co. L.* 12. *b.*

So, if the ſame Perſon has Title by two Bloods, and he cannot take by the moſt worthy, he ſhall not take by the other, but the Land eſcheat: as, if *A.* attainted has Iſſue *B.* and *C.* and the eldeſt purchaſes, and dies; if *C.* ſhould take by mediate, and not by immediate Deſcent, tho' he has the Blood of *A.* and his Wife, if he cannot take as Heir to *A.* he cannot as Heir to the Wife; tho' both Bloods, *viz.* of the Father and Mother, were inheritable to *B.* 1 *Vent.* 426.

## (C. 4.) To the whole Blood.

So a Deſcent ſhall be to the Heir of the whole Blood: And therefore, if a Man has Iſſue by divers Venters, and the eldeſt purchaſes Lands, and dies without Iſſue; his half Brother ſhall not inherit to him. *Lit. S.* 6.

So none ſhall inherit an Eſtate in Fee-ſimple, if he has not in him the Blood of the Father and Mother. *Co. L.* 14. *a.*

And therefore, if the eldeſt Brother purchaſes, and dies without Iſſue, the Deſcent ſhall be to his Siſter, Uncle, or other next Couſin of the whole Blood, and not to the half Brother. *Lit. S.* 6, 7. 1 *Vent.* 424. *Dy.* 342. *a.*

If a Man pleads, that he is Heir of the Part of his Mother, he ought to ſhew that he is Heir of the whole Blood. 1 *Ver.* 442.

But if the eldeſt Brother purchaſes, and dies without Iſſue, and his Uncle, *&c.* enters as Heir, and dies; the half Brother may inherit to him; for he is of his whole Blood. *Lit. S.* 8.

## (C. 5.) An Heir ought to be of the Blood of the firſt Purchaſer.

None can be Heir to Lands, who is not of the Blood of the firſt Purchaſer. *Co. L.* 12. *a.*

And therefore, if a Man inherits Lands as Heir to his Father and dies without Iſſue, it ſhall deſcend to his Heir of the Part of his Father; and the Heir of the Part of his Mother ſhall never take, for he is not of the Blood of the firſt Purchaſer: And if there is no Heir of the Part of his Father, the Land eſcheats. *Lit. S.* 4.

So, if he inherits as Heir to his Mother, it ſhall deſcend to the Heir of the Part of the Mother: and if there be not any ſuch, the Land eſcheats. *Lit. S.* 4.

So, if *A.* purchaſes Land and marries *B*; his Iſſue, and all of the Blood of *A.* may inherit: but none of the Blood of *B.* ſhall ever inherit. *Co. L.* 12. *a.*

So, if *B.* was the Purchaſer, none of the Blood of *A.* could ever inherit. *Co. L.* 12. *a.*

(C. 6.) When

## (C. 6.) When he takes as Heir of the Part of the Mother.

If a Man has Land as Heir to his Mother, and dies without Alteration of his Eſtate; the Heir of the Part of his Mother ſhall always take.

So, if he makes a Feoffment to the Uſe of himſelf and his Heirs; ſuch Uſe is in him as the antient Uſe, and follows the Nature of the Land; and therefore, the Heir of the Part of the Mother ſhall inherit. *Co. L.* 13. *a. Dy.* 134. 2 *Rol.* 780. *l.* 35.

Tho' the Uſe be expreſly limited to him and his Heirs; as well as where it reſults to him by Operation of Law. *Cont. Dy.* 134. *a. Q.* 2 *Rol.* 780. *l.* 35. *R. acc.* 3 *Lev.* 406. *Sal.* 591. *Eq. Ca.* 186.

Tho' a Feoffment, Fine, *&c.* be declared to the Uſe of *A.* for Life, and afterwards to the Uſe of him and his Heirs: for the Fee is the antient Uſe and Reverſion. 3 *Lev.* 406.

Or, to the Uſe of himſelf for Life, or for 99 Years, and afterwards to *A.* for Life, and afterwards to him and his Heirs. *R.* 3 *Lev.* 406.

Or, to the Uſe of himſelf for Life, then to his Wife for Life, then to the 1ſt, 2d, and other Sons in Tail, and afterwards to him and his Heirs; the Reverſion is the antient Eſtate, and ſhall deſcend to the Heir of the Part of his Mother. *R. in C. B. Tr.* 7 *An. inter Abbott and Burton, Sal.* 591. *(Reported Comyns's Rep.* 160.*)*

Tho' there be a Fine and Recovery, by which the Uſe ariſes out of the Eſtate of the Conuſees: for they make but one Conveyance. *R. Sal.* 591. *(Vide Comyns's Rep.* 160.*)*

So, if a Man ſeiſed as Heir of the Part of his Mother, makes a Feoffment upon Condition, and afterwards enters for the Condition broken; the Heir of the Part of his Mother ſhall take. *Vide Co. L.* 12. *b.*

So, if the Feoffor dies, and his Heir enters; the Heir of the Part of the Mother ſhall afterwards have the Land. *Co. L.* 12. *b.*

If ſuch a Man makes a Leaſe for Life or Years, or a Gift in Tail, rendring Rent; the Reverſion deſcends to the Heir of the Part of the Mother, and the Rent, as incident to the Reverſion. *Co. L.* 12. *b.*

So, if before the *St. Quia Emptores terrarum* he had made a Feoffment in Fee of Parcel of his Manor, rendring Rent. *Co. L.* 12. *b.* 8 *Co.* 54. *a.*

So, if he deviſes to *A.* for Years, Remainder to *B.* in Fee, who was Heir of the Part of the Mother; he ſhall have it by Deſcent. *R.* 3 *Lev.* 127.

So, if a Man has a Rent-ſeck as Heir of the Part of his Mother, and the Grantor grants a Diſtreſs for Rent, by which it becomes a Rent-charge; it ſhall go to the Heir of the Part of the Mother. *Co. L.* 13. *a.*

So, if he has a Manor, and a Tenancy eſcheats. *Co. L.* 13. *a.*

If he recovers upon Voucher, the Heir of the Part of the Mother ſhall have the Land recovered. *Co. L.* 13. *a.*

## (C. 7.) When not.

But if a Man takes by Purchaſe, the Heir of the Part of his Father ſhall inherit, and not the Heir of the Part of his Mother.

And therefore, if a Man ſeiſed as Heir of the Part of his Mother makes a Feoffment, and takes back an Eſtate to him and his Heirs; the Heir of the Part of his Father ſhall take: for it is a new Purchaſe. *Co. L.* 12. *b.*

If he makes a Feoffment, rendring Rent to him and his Heirs; the Rent goes to the Heir of the Part of his Father. *Co. L.* 12. *b.*

If Husband and Wife have Issue *B.* and Land is given to *A.* for Life, Remainder to the Heirs of the Wife; *B.* takes as a Purchaser: and therefore the Land shall descend to the Heir of the Part of his Father. *Co. L.* 13. *a.*

If Husband and Wife levy a Fine of the Land of the Wife *Sur Grant & Render* to them in Tail, Remainder to the Heirs of the Husband; the Heir of the Part of the Husband shall take: for it is as a Feoffment and Refeoffment. *R.* 1 *Sal.* 337. *Sho.* 92. *Carth.* 140.

If a Man seised of the Part of his Mother levies a Fine *Sur Grant & Render* to himself, he shall be afterwards seised of the Part of his Father. *Mod. Ca.* 45.

## (C. 8.) Must be Heir to him who was last seised.

A Man, who takes by Descent, ought to be Heir to him who was last seised of the actual Freehold and Inheritance. *Co. L.* 11. *b.* 15. *a.*

And therefore, if a Man dies without Issue, and his Uncle as his Heir enters, and dies; the Father may be Heir to the Uncle, his Brother, who was last seised: but, if the Uncle was not seised, the Father cannot be Heir. *Co. L.* 11. *b.*

So, if *A.* dies having a Son and a Daughter by one Venter, and a Son by another, and the Son by the first Venter becomes actually seised, and dies; his Sister shall be Heir to him: but if he be not seised, the Son by the 2d Venter shall be Heir to his Father. *Co. L.* 15. *R. Jon.* 361.

And in the last Case, the Descent is immediate from the Father to the Son by the 2d Venter. *R. Jon.* 361.

So a Man who claims an Use, Seigniory, Rent, Adowson, or other Hereditament, ought to be Heir to him who was last seised. *Co. L.* 14. *b.*

So he, who claims a Copyhold. *Vide Copyhold*, (D. 1.)

## (C. 9.) What shall be a Possession.

And therefore, where there was an actual Seisin by an Uncle, or Brother, the Father or Sister may be Heir: As, if the Uncle, or Brother made an actual Entry into the Land. *Co. L.* 11 *b.* 15. *a.*

If he entred into a Parcel, generally, it is sufficient for all the Lands in the same County. *Co. L.* 15. *a.*

If the Brother was within Age, an Entry by his Guardian is sufficient. *Co. L.* 15. *a.*

If the Land was in Lease for Years, it is sufficient, tho' the Brother did not enter, nor take the Rent: for the Possession of his Lessee was his own Possession. *Co. L.* 15. *a.* 4 *Co.* 21. *a.* *R.* 1 *Vent.* 261.

So, if it was a Lease for Life, and the Brother received the Rent after the Death of his Ancestor. *Semb. Co. L.* 15. *a.*

So, if a Father devised Land *in Capite* to his Wife for Life, and she enter'd into the whole; it shall be a Possession of a third Part for the Heir, who was Tenant in Common with her for this third Part. *R. Mo.* 868.

## (C. 10.) What not.

But if the Uncle or Brother had not actual Seisin, the Father or Sister shall not be Heir: And therefore, if the Uncle or Brother dies before Entry by him, his Guardian, or Lessee, &c. the Son by the second Venter shall be Heir. *Co. L.* 15.

So, if there be a Lease for Life, or a Gift in Tail, and he dies before Receipt of Rent. *Co. L.* 15 *a.* *R.* 1 *And.* 31.

So,

So, if a Deſcent be of a Rent, and he dies before Seiſin of it. *Co. L.* 15. *b.*

Or, of an Office, Franchiſe, Courts, Common, *&c.* *Co. L.* 15. *b.*

So, if an Advowſon deſcends, and he dies before Preſentation. *Co. L.* 15. *b.*

So, if a Dignity deſcends: for there cannot be a Seiſin of it. *Co. L.* 15. *b.* *R. Cro. Car.* 601.

So, if the Crown, or the Demeſne Lands of the Crown, deſcend. *Co. L.* 15. *b.*

So, if an Eſtate Tail deſcends: for it goes *ſecundum formam Doni.* *Co. L.* 14. *b.* 15. *b.*

So, if the Uncle, or Brother be ſeiſed, but his Seiſin be defeated: as, if the Wife of his Anceſtor recover Dower, and ſurvive him. *Co. L.* 15. *b.*

What Advantages an Heir ſhall have, *Vide in Chancery,* (3 P. 2, 3.)

## (C. 11.) Who cannot be an Heir.

But a Monſter, which has not human Form, cannot take by Deſcent, as Heir. *Co. L.* 7. *b.* (C. 11.) A Monſter.

So a Baſtard cannot take by Deſcent. *Co. L.* 8. *a.* *Vide Baſtard,* (E.—F.) (C. 12.)
Nor an Alien. *Vide Alien,* (C. 1.) A Baſtard, Alien, &c.

So a Perſon attainted for Treaſon or Felony cannot be Heir to any one. *Co. L.* 8. *a.* *St. P. C.* 195. *b.* (C. 13.) A Perſon attainted.

So none can be Heir to a Man attainted for Treaſon or Felony: for his Blood is corrupted. *Co. L.* 8. *a.* *St. P. C.* 195. *b.*

So, if a Perſon attainted be pardoned by the King; a Son, born after the Attainder and before the Pardon, cannot be Heir to him. (*Vide St. P. C.* 195. *b.*)

Nor a Son, born before the Attainder: for his Blood, corrupted by the Attainder, is not reſtored by the Charter of Pardon. *Co. L.* 8. *a.*

So, if a Son, born before the Attainder ſurvives his Father, a Younger Son, born after the Charter of Pardon, cannot inherit, tho' his Blood is not corrupted: for his Elder Brother is living, tho' not inheritable. *Co. L.* 8. *a.* *Vide* 1 *Vent.* 413, 417.

If a Man, after an Attainder has two Sons, and one of them purchaſes, and dies without Iſſue, the other cannot be Heir to his Brother. *Co. L.* 8. *a.*

So, if a Man attainted has a Son, who purchaſes, and dies without Iſſue; his Uncle, *&c.* cannot inherit: for he ought to derive his Blood by the Mediation of the Father, who was attainted. 1 *Vent.* 425.

And when the Blood of the Heir is corrupted, which hinders a Deſcent to him, the Land eſcheats. 1 *Vent.* 426.

But if a Man be attainted, and afterwards has a Charter of Pardon, a Son, born after the Pardon, may inherit. *Co. L.* 8. *a.*

So, if a Man attainted has 2 Sons, one born before the Attainder, and the other after a Pardon, and the Elder dies in the Life-time of his Father, the Younger may inherit. *Co. L.* 8. *a.*

So, if a Man before Attainder has 2 Sons, and one purchaſes, and dies; the other may be Heir to his Brother. *Co. L.* 8. *a.* 1 *Vent.* 425. *Dub. Mo.* 569.

So, if the Grandfather be attainted, and the Son purchaſes, and dies without Iſſue; his Uncle may inherit: for the Attainder was Paramount to him. 1 *Vent.* 425.

So,

So, if there be a Pardon by Act of Parliament, a Son born before may inherit: for the Corruption of the Blood is purged. *Vide Co. L.* 8. *a.*

So, if the Blood of the Son be reſtored by Act of Parliament, the collateral Heirs of the Father may inherit him. *R.* 1 *Vent.* 420.

(C. 14.) A Father to a Son.

So Inheritances cannot lineally aſcend: And therefore, a Father cannot be Heir to his Son. *Co. L.* 10. *b.* *Vide Lit. S.* 3. *Vide Ante*, (C. 1.)

And that was the Feudal Law. *Mad.* 125.

But not the Law of the *Jews*, or *Greeks*. *Per Hale*, 1 *Vent.* 414.

Nor, of the 12 Tables. *Per Hale*, 1 *Vent.* 414. *Cont. Co. L.* 11. *a.*

Deſcents are either lineal, or collateral: and both, either mediate, or immediate. 1 *Vent.* 415.

The immediate lineal Deſcent, is from the Father to his Son; The collateral, from one Brother to another. 1 *Vent.* 415, 423.

The mediate, when one derives his inheritable Blood to another by the *Medium* of a third Perſon; as, in lineal Deſcent, if a Son claims as Heir to his Grandfather or Great Grandfather, it ſhall be *mediante Patre*, tho' the Father be dead at the Time of the Deſcent. 1 *Vent.* 415.

So, in a collateral Deſcent from a Nephew to an Uncle, or *è contra*, it ſhall be made *mediante Patre*. 1 *Vent.* 415.

When a Deſcent ſhall be *ſecundum formam Doni*, *Vide Eſtates*, (B. 7, 8.)

Where it ought to be derived wholly through Males, or through Females, *Vide Eſtates*, (B. 9.)

## (D) A Deſcent, which takes away Entry.

### (D 1.) What ſhall be.

BY the Common Law, if a Man ſeiſed of an Eſtate of Inheritance in Lands or Tenements dies ſeiſed, and the ſame Lands and Tenements deſcend from him to his Heir; the Entry of him, who had Right, is hereby taken away. *Co. L.* 237.

And the Entry ſhall be taken away where a Man dies ſeiſed in Tail, as well as in Fee. *Lit. S.* 385, 386.

If he comes to the Land by Diſſeiſin, Abatement, or Intruſion; or by the Feoffment, Gift, *&c.* of a Diſſeiſor, *&c.* *Co. L.* 237. *b.*

If he in Reverſion or Remainder diſſeiſes the Tenant for Life, and dies ſeiſed. *Co. L.* 239. *a.*

If he in Reverſion or Remainder, expectant upon a Term for Years, or an Eſtate of Tenant by Statute, or *Elegit*, dies ſeiſed: for he is ſeiſed of the Fee and Freehold. *Co. L.* 239. *b.*

And a Deſcent tolls the Entry of all corporeal Tenements, which lie in Livery. *Co. L.* 237. *b.*

So, if he who dies ſeiſed, had but a Seiſin in Law; As if a Diſſeiſor of an Infant dies ſeiſed, and then the Infant attains his full Age, and afterwards the Heir of the Diſſeiſor, before his actual Entry, dies. *Co. El.* 239. *b.*

If the Deſcent be to an Heir lineal, or collateral. *Lit. S.* 389.

## (D. 2.) What not.

(D. 2.) If he does not die seised of the Inheritance, and Freehold also.

But a Descent does not take away an Entry, if he who died seised had only an Estate of Freehold. *Litt. S.* 387.

As, if Tenant for Life, or *pur autre vie* of the Disseisor, dies seised.

If a Disseisor leases to *B.* and his Heirs for the Life of *A.* and *B.* dies seised, and his Heir enters: for he takes only as a special Occupant. *Co. L.* 239. *a.*

If a Man disseises the Tenant for Life of the King: for he gains nothing but an Estate for the Life of the Lessee. *Co. L.* 239. *a.*

So a Descent does not toll an Entry, where a Man dies seised only of a Reversion, or Remainder. *Litt. S.* 388.

So, if a Disseisor leases for his own Life, and dies; tho' the Fee and Freehold descend to his Heir, yet he died seised only of the Reversion. *Co. L.* 239. *b.*

(D. 3.) If he dies seised of Things in Grant.

So a Descent of Tenements which lie in Grant does not take away the Entry: As, of an Advowson, Rent, or Common in Gross, *&c.* *Co. L.* 237. *b.*

Nor, a Descent of a Copyhold. *Vide Copyhold*, (E.)

(D. 4. If there be not a Dying seised.

So a Descent does not toll Entry, if a Man does not die seised: As, if a Disseisor, or his Heir, or Feoffee, enters into Religion, and is professed; tho' it be a civil Death. *Litt. S.* 410.

So, if he does not die seised of the same Estate, which the Heir has by Descent; As, if Donee in Tail of a Disseisor discontinues, and afterwards disseises the Discontinuee, and dies seised: for the Issue in Tail is in his Remitter, and is not in of the Estate in Fee of which his Father died seised. *Co. L.* 238. *b.*

(D. 5.) If no Descent, or the Descent avoided.

So an Entry shall not be tolled, if there be no Descent; As, if Land escheats upon the Death of a Disseisor or Feoffee without Issue. *Lit. S.* 390.

So, if the Head of a Corporation Aggregate dies; that does not toll Entry.

So, if a Corporation Sole, as a Bishop, Dean, *&c.* dies seised, and the Land goes to his Successor; that does not toll the Entry, tho' there be 20 Successions. *Lit. S.* 413.

So, if a Descent be defeated: As, if an Heir, after a Descent, enters and endows his Mother: for as to this third Part the Descent is avoided. *Lit. S.* 393.

If a Disseisor, or his Heir afterwards enters for a Condition broken. *Lit. S.* 409.

So, if the Disseisor himself, after a Descent comes to the same Land by Descent or Purchase, of an Estate of Freehold, the Right of Entry is revived: As, if a Disseisor enfeoffs his Father, who afterwards dies seised, and the Land descends to the Disseisor, as his Heir. *Lit. S.* 395.

So, if he enfeoffs his Grandfather, and the Land descends to his Father, and afterwards to the Disseisor. *Co. L.* 238. *b.*

So, if the Father, after the Descent, leases to the Disseisor for Life. *Co. L.* 238. *b.*

So, if after a Descent, the Issue in Tail dies without Issue, whereby the Estate Tail is determined; the Disseisee may enter upon him in Reversion or Remainder. *Co. L.* 238. *b.*

So, if the Deſcent be not immediate: As, if a Woman Diſſeiſoreſs takes Huſband, has Iſſue, and dies, and the Huſband is Tenant by the Curteſy, and dies; the Deſcent to the Iſſue does not toll the Entry. *Lit. S.* 394. *R.* 1 *Sal.* 241.

If a Diſſeiſor dies ſeiſed, his Wife *privement enſeint*; the Deſcent to the Son after-born does not take away the Entry. *Co. L.* 241. *b.*

(D. 6.) If the Deſcent be in Time of War.

So Entry ſhall not be tolled, where the Diſſeiſin and Deſcent were in Time of War. *Lit. S.* 412.

Or, if the Diſſeiſin was in Time of Peace, and the Dying ſeiſed in Time of War. *Co. L.* 249. *b.*

(D. 7.) Or, at the Time of the Deſcent, he who had the Right was an Infant.

So Entry ſhall not be tolled, where he who had the Right was an Infant at the Time of the Deſcent. *Lit. S.* 402.

But an Infant ſhall be bound by a Deſcent from the King. *Co. L.* 246. *a.*

So, if he had not a Right of Entry at the Time of the Deſcent: As, if a Man dies his Wife *privement enſeint*, and *B.* abates, and dies ſeiſed, and then a Son is born; he ſhall be bound by the Deſcent. *Co. L.* 245. *b.*

So, if Donee in Tail diſcontinues, and afterwards diſſeiſes the Diſcontinuee, and dies ſeiſed; the Heir of the Diſcontinuee ſhall be bound, tho' an Infant: for, by the Deſcent to the Heir of the Diſſeiſor, he was remitted. *Co. L.* 246. *a.*

(D. 8.) *Feme Covert.*

So, where a *Feme Covert* is diſſeiſed by *A.* who dies ſeiſed during the Coverture; her Entry is not tolled after the Death of her Huſband. *Lit. S.* 403.

So, if ſhe was an Infant when diſſeiſed, and marries; tho' the Diſſeiſin was before the Coverture. *Co. L.* 246. *b.*

But if a Woman of full Age be diſſeiſed, and afterwards takes Huſband; a Deſcent during the Coverture tolls her Entry: for it was her Folly that ſhe did not enter before Marriage, and that ſhe took a Huſband who did not enter. *Co. L.* 246. *a.*

So, if a *Feme Covert* be diſſeiſed, and her Huſband dies, and before a Deſcent ſhe takes another Huſband. *R.* 1 *Sal.* 241.

So a Deſcent during the Coverture bars the Entry of the Huſband, where the Wife, after his Death, may enter. *Lit. S.* 403.

(D. 9.) Non ſane, &c.

So, where a Man was Non ſane at the Time of the Deſcent, tho' his Entry is tolled, becauſe he cannot diſable himſelf, yet the Entry of his Heir is not tolled. *Lit. S.* 405.

(D. 10.) Deſcent does not take away a Title of Entry.

So a Deſcent does not toll a Title of Entry; for there is no Remedy for it by Action: As, if a Feoffment be upon Condition, and the Condition is broken, and afterwards the Feoffee dies ſeiſed, and there be a Deſcent to his Heir; the Entry of the Feoffor for the Condition broken is not tolled. *Lit. S.* 391.

So, tho' there was a Deſcent before the Condition broken. *Co. L.* 240. *a.*

Tho' the Feoffee was diſſeiſed, and the Diſſeiſor died ſeiſed, and the Land deſcended to his Heir. *Lit. S.* 392.

So a Deſcent does not toll a Title to enter for an Alienation in *Mortmain*. *Co. L.* 240. *b.*

Or, *Cauſâ Matrimonii prælocuti*. *Co. L.* 240. *b.*

Nor a Title to enter, upon Conſent to a Raviſher. *Co. L.* 240. *b.*

So a Deſcent does not toll the Title of a Deviſee, who claims by the Will of him who died ſeiſed. *Co. L.* 240. *b.*

So,

So, if the younger Son enters by Abatement after the Death of his Father, and dies ſeiſed; the Deſcent does not toll the Entry of the elder Son, who claims by the ſame Title; for it ſhall be intended that the younger claimed as Heir. *Lit. S.* 396.

Tho' the younger Son be but of the half Blood. *Co. L.* 242. *b.*

So, if the younger Son enters by Intruſion. *Co. L.* 243. *a.*

Otherwiſe, if the younger Son enters upon the elder, and diſſeiſes him. *Lit. S.* 397.

Or enters without Colour of Title: As, if a Gift be to Huſband and Wife and the Heirs of their Bodies, who have Iſſue a Daughter, and the Wife dies, and the Huſband takes another Wife, has Iſſue ſeveral Sons, and dies, and the eldeſt Son enters by Abatement, and dies ſeiſed; the Decent tolls the Entry of the Daughter: for ſhe claims by a different Title. *Co. L.* 242. *b.*

So, if the eldeſt Son enters by Abatement, where the Land is of the Nature of *Borough-Engliſh*. *Co. L.* 243. *a.*

Or, if the younger Son enters by Abatement, where his Father had made a Leaſe for Years: for the Poſſeſſion of the Leſſee is the Poſſeſſion of the eldeſt Son. *Co. L.* 243. *a.*

If one Parcener enters ſpecially claiming the whole Eſtate, it does not toll the Entry of the other Parcener. *Lit. S.* 398.

So, if there be a Leſſee for Years, and the Leſſor be diſſeiſed, and the Diſſeiſor die ſeiſed; the Deſcent does not toll the Entry of the Leſſee, tho' the Entry of the Leſſor be tolled: for the Leſſee had only a Term. *Lit. S.* 411.

Nor, the Entry of Tenant by Statute, or *Elegit*. *Co. L.* 249. *a.*

So by the *St.* 32 *H.* 8. 33. The Dying ſeiſed and Deſcent of a Diſſeiſor, not having a Right, ſhall not take away the Entry of him that Right hath, unleſs the Perſon ſo dying ſeiſed was in Poſſeſſion 5 Years after the Diſſeiſin, without Entry or Claim of him that hath Right.

Tho' the Diſſeiſin be not with Force. *Co. L.* 238. *a.*

So, if a Corporation ſole be diſſeiſed; the Entry of the Succeſſor is not taken away, if the Diſſeiſor was not in Poſſeſſion 5 Years before the Dying ſeiſed. *Co. L.* 238. *a.*

So, if Leſſee for Life be diſſeiſed, and dies, and afterwards the Diſſeiſor dies ſeiſed within 5 Years; the Entry of him in Reverſion or Remainder is not tolled, tho' the Diſſeiſin be not immediate to him. *Co. L.* 238. *a.*

But this *Stat.* does not extend to an Abator, or Intruder. *Co. L.* 238. *a.*

Nor, to a Feoffee of a Diſſeiſor. *Co. L.* 238. *a.*

So, if Leſſee for Life be diſſeiſed by *A.* who dies ſeiſed within 5 Years, and afterwards the Leſſee dies without Entry; he in Reverſion or Remainder cannot enter: for he had no Right at the Time of the Deſcent. *Semb. Co. L.* 238. *a.*

When a Deſcent ſhall be avoided by Continual Claim, *Vide Claim*, (A. 1, &c.)

When a Deſcent from a *Baſtard Eigne* binds the *Mulier Puiſne*, *Vide Baſtard*, (F.)

For more of Title *Diſcent*, *Vide Aſſets*, (A.—B.)—*Parceners*, (A. 7.)—*Remitter*, (A. 1, &c.)—*Roy*, (A. 1, 2.)

# DISCHARGE.

*Vide Parliament*, (L. 46.)—*Pleader*, (2 G. 13, 16.—3 M. 12, &c.)—*Releaſe*.—*Temps*, (G. 11, 12.)

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# DISCLAIMER.

*ſee Hob: title more fully in Vin. Abr.*

## (A) When a Man may make it.

IN a Real Action, the Tenant may diſclaim to have any Eſtate in the Lands demanded. *Vide Abatement*, (F. 15.)—*Droit*, (F.)—*Vide Co. L.* 102.

## (B) The Effect of a Diſclaimer.

IF the Lord diſclaims, his Seigniory is extinct, and the Tenant ſhall hold of the Lord *Paramount* by the ſame Services. *Lit. S.* 146.

If the Tenant diſclaims, the Lord ſhall have a Writ of Right upon his Diſclaimer for Recovery of the Land. *Vide Droit*, (F.)

## (C) When a Man cannot diſclaim.

BUT he who cannot part with the whole Eſtate in the Land, cannot diſclaim; As, Tenant for Life, or Years.

Nor a Perſon ſeiſed ſolely in *auter Droit*: As, an Huſband ſeiſed in Right of his Wife.

Or, an Abbot, Biſhop, Dean, Archdeacon, Prebendary, *&c.* ſeiſed in Right of his Convent, Church, *&c.* *Vide Lit. S.* 146. *Co. L.* 102. *b.* 103. *a.*

*Vide Abatement*, (F. 15.)—*Droit*, (F.)

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# DISCONTINUANCE.

## (A) Diſcontinuance, By whom it may be made.

### (A. 1.) By a Corporation ſole.

AS to Diſcontinuance in Pleading, and Proceſs, *Vide Amendment*, (I.)—*Courts*, (P. 11.)—*Pleader*, (V. 1.—W. 1.)

A Diſcontinuance of an Eſtate in Lands and Tenements is, when by the Alienation of Tenant in Tail, or any ſeiſed *en auter Droit*, the Iſſue, Heir, Succeſſor,

Succeſſor, or Reverſioner cannot enter, but ſhall be put to his Action. *Co. L.* 325.

As, by the Common Law, if a Corporation ſole, ſeiſed *en auter Droit*, had aliened without the Aſſent of the Convent or Chapter; this was a Diſcontinuance, and his Succeſſor could not enter without Action. *Co. L.* 325. *b.*

As, if an Abbot, &c. ſeiſed in Right of his Houſe, had aliened in Fee, in Tail, or for Life, without the Aſſent of the Convent; his Succeſſor could not enter without a Writ of Entry *ſine Aſſenſu Capituli*. *Lit. S.* 593.

Or a Biſhop, without the Aſſent of the Dean and Chapter. *Co. L.* 325. *b. Lit. S.* 651.

Or a Dean, who is ſole ſeiſed of Land in Right of his Deanery. *Lit. S.* 652.

Or a Maſter of an Hoſpital, ſole ſeiſed in Right of his Houſe, if he aliens without the Aſſent of his Brethren. *Lit. S.* 657.

But if an Abbot, Biſhop, &c. had aliened by the Common Law with the Aſſent of the Convent, Dean and Chapter, &c. it was not a Diſcontinuance. *Co. L.* 325. *b.*

So, if a Corporation Aggregate, as Dean and Chapter, Mayor and Commonalty, Maſter and Fellows, &c. had aliened; it was not a Diſcontinuance: for the Alienation by the whole Corporation was lawful; by the Head only was a Diſſeiſin. *Co. L.* 325. *b. Lit. S.* 652, 654, 656.

So ſince *St.* 1 *El.* 19. if a Biſhop makes a Leaſe not warranted by the Statute; it is not a Diſcontinuance: for the Leaſe is void. 1 *Rol.* 633. *l.* 30.

So, if a Parſon had aliened, &c. without the Aſſent of the Patron and Ordinary; his Succeſſor might have entered. *Lit. S.* 643.

Or, a Vicar. *Lit. S.* 644.

So a Releaſe, or Confirmation, with Warranty, by an Abbot, Biſhop, &c. did not make a Diſcontinuance: for his Warranty expired by his Death, Privation, &c. *Lit. S.* 604.

Nor, a Grant of a Reverſion, Rent, Common, or Thing which lies in Grant. *Lit. S.* 627, 628.

But now, by the *St.* 1 *El.* 19. 13 *El.* 10. and 1 *Jac.* 3. Biſhops and all other Eccleſiaſtical Perſons are diſabled to alien or diſcontinue any of their Eccleſiaſtical Livings. *Co. L.* 325. *b.*

The Remedy for the Succeſſor upon a Diſcontinuance, ſhall be by a Writ of Entry *ſine Aſſenſu Capituli*. *F. N. B.* 194. *I.* (A. 2.) How relieved.

And it lies in the *Per*, *Cui*, and *Poſt*. *F. N. B.* 194.

## (A. 3.) By an Huſband ſeiſed in Right of his Wife.

So, by the Common Law, if an Huſband ſeiſed in Right of his Wife had aliened in Fee, Tail, or for Life; this made a Diſcontinuance to the Wife and her Heirs, who could not enter after the Death of her Huſband, but were put to their Action, by a Writ of *Cui in Vitâ*, or *Sur cui in Vitâ*. *Lit. S.* 594.

So, if Huſband and Wife had joined in a Leaſe for Life, by Deed, rendring Rent. *Co. L.* 333. *a.*

So, if Huſband and Wife were jointly ſeiſed in Fee, or in Tail, and the Huſband alone had made a Feoffment; it was a Diſcontinuance to the Heir of the Wife. *R.* 8 *Co.* 71. *b.* 1 *Rol.* 634. *l.* 10.

But a Releaſe by an Huſband, with Warranty, to a Diſſeiſor of Land, of which he was ſeiſed in Right of his Wife, was not a Diſcontinuance: for the Warranty does not deſcend upon the Wife, unleſs where ſhe is Heir to her Huſband. *Lit. S.* 605.

Nor a Bargain and Sale by Deed indented and inrolled. *Per Brown, Mo.* 28.

So, if a Woman Tenant in Tail takes Huſband, who aliens in Fee; it is not a Diſcontinuance, for he was not ſeiſed of the Eſtate Tail. *Semb.* 1 *Rol.* 634. *l.* 15.

But now, by the *St.* 32 *H.* 8. 28. a Feoffment or other Act of the Huſband, of the Inheritance or Freehold of his Wife, ſhall be no Diſcontinuance, nor prejudice the Entry of the Wife, her Heirs, or any claiming after her Death. *Vide Baron and Feme*, (K.)

Yet it ſhall be a Diſcontinuance till avoided by the Entry of the Wife; and if the Wife before Entry levies a Fine, that affirms the Eſtate of the Feoffee. *R. per* 3 *J.* 2 *Rol.* 312.

## (A. 4.) By Tenant in Tail.

(A. 4.) Alienation of what Tenant makes a Diſcontinuance.

So now, if Tenant in Tail, by Feoffment, *&c.* aliens in Fee, in Tail, or for the Life of another, and dies; his Iſſue, or, if he dies without Iſſue, he in Reverſion or Remainder cannot enter, but is put to his *Formedon. Lit. S.* 595, 6, 7.

So, if Huſband and Wife ſeiſed to them and the Heirs of their two Bodies, and the Huſband alone makes a Feoffment, *&c.* and dies after his Wife; for the Iſſue claims as Heir of both Bodies. *Co. L.* 326. *b. Vide Baron and Feme*, (I. 2.)

If Tenant in Tail leaſes for Years, and afterwards makes a Feoffment, and Letter of Attorny to make Livery, who ouſts the Leſſee, and makes Livery; it will be a Diſcontinuance. *R. Mo.* 91, 281. 1 *Rol.* 634. *l.* 35. *Vide Poſt*, (B.)

So, if Tenant in Tail, Remainder to himſelf in Fee, makes a Feoffment; it ſhall be a Diſcontinuance, tho' the Fee was in him. 1 *Rol.* 633. *l.* 7. *Cro. Car.* 405, 6.

So, if Tenant in Tail of Lands held *in Capite* by Deviſe, before *primier Seiſin* ſued makes a Feoffment; it ſhall be a Diſcontinuance of two Parts which paſs by the Deviſe: for the Feoffment was good for them. *R.* 2 *And.* 210.

If Tenant in Tail makes a Leaſe for Life not warranted by the *St.* 32 *H.* 8. 28. it will be a Diſcontinuance. 1 *Rol.* 633. *l.* 35.

So, if a Gift be to Huſband and Wife and the Heirs of the Body of the Huſband, who makes a Feoffment; it will be a Diſcontinuance: for he was ſeiſed of the Tail. 1 *Rol.* 634. *l.* 20. *Lut.* 732.

Or, if the Huſband and Wife join in a Feoffment, or Fine. 1 *Rol.* 634. *l.* 25.

But a Fine, or Feoffment by Tenant for Life to another in Fee, does not make a Diſcontinuance; but is a Forfeiture.

So, if there be Tenant for Life, Remainder to *A.* in Tail, who diſſeiſes the Tenant for Life, and afterwards makes a Feoffment; it is not a Diſcontinuance: for he was not ſeiſed of the Tail. 1 *Rol.* 634. *l.* 30. *Vide Poſt*, (C. 3.)

(A. 5.) Of what, not. By *St.* 11 *H.* 7. 20. What Eſtate ſhall be within the Statute.

But now, by *St.* 11 *H.* 7. 20. If any Woman, who hath an Eſtate in Dower, for Life, or in Tail jointly with her Huſband, or to herſelf only, or to her Uſe, in Lands, *&c.* of the Inheritance or Purchaſe of her Huſband, or given to them in Tail, or for Life, by any Anceſtor of the Huſband, or any ſeiſed to the Uſe of him or his Anceſtor, ſhall ſole, or with an after-taken Huſband, diſcontinue, alien, *&c.* ſuch Diſcontinuance, *&c.* ſhall be void.

And

And if the Woman at the Time of ſuch Diſcontiuuance be Sole, ſhe ſhall be barred of all Intereſt, *&c.* and he, to whom the Title belongs after her Deceaſe, ſhall immediately enter and enjoy.

If ſuch after-taken Huſband and Wife join in a Diſcontinuance, *&c.* he, to whom the Title belongs after the Deceaſe, may enter and enjoy during the Life of Huſband; but afterwards the Woman may re-enter, *&c.*

And every Eſtate made for a Jointure of a Wife is within this Statute. *Semb. Dy.* 148.

If it be to a Wife for Life, or in Tail.

Whether it be in Uſe, or Poſſeſſion. *Dy.* 147. *b. Mo.* 28.

So, if there be an Eſtate to a Wife of the Purchaſe or Gift of the Huſband or his Anceſtor, it ſhall be within the *St.* 11 *H.* 7. tho' it be not a Jointure ſtrictly within the *St.* 27 *H.* 8. As, if Huſband and Wife hold by Copy in Fee, and the Huſband purchaſes the Freehold of the Copyhold to him and his Wife in Tail. *R. Cro. El.* 24.

Tho' the Gift was by the Anceſtor of the Huſband, to them in Tail, before the Marriage; upon which they married. *Semb.* 2 *Cro.* 175.

So, if an Anceſtor of the Huſband enfeoffs *A.* upon Condition that he ſhall give back to the Huſband and Wife in Tail; which is done accordingly. *Mo.* 93.

So, if the Huſband himſelf enfeoffs *A.* upon the ſame Condition. *R.* 3 *Co.* 50. *b. Cro. El.* 514.

Tho' the Eſtate made by the Feoffee does not purſue all the Circumſtances of the Condition. *Cro. El.* 514.

So, if an Anceſtor of the Huſband makes an Eſtate to *A.* for 30 Years, and afterwards to himſelf for Life, and afterwards to the Huſband and Wife in Tail. *R. Dy.* 148.

Or, to *A.* for 30 Years, and afterwards to 3 others for their Lives, and then to the Huſband and Wife. *Dy.* 148. *Bend.* 40.

So, if an Huſband purchaſes Land, which is conveyed to him and his Wife, *&c.* tho' he pays for the Purchaſe out of the Portion of his Wife. *Mo.* 250.

If a Man and Woman Joint-tenants intermarry, and afterwards convey their Land to themſelves in Tail, *&c.* it ſhall be within the Statute for the Huſband's Moiety. *Mo.* 715. 28, 9.

So an Eſtate to a Wife, by an Huſband or his Anceſtor, ſhall be within the Statute, tho' it does not appear by the Deed itſelf to be given in Conſideration of Marriage: for it may be averred, and found by the Jury. *R. Dy.* 148. *Bend.* 40.

So, tho' the Deed be in Conſideration of Marriage, and of ſo much Money. *R. Mo.* 93. *R.* 2 *Cro.* 474.

So, tho' the Deed be in Conſideration of Money, and no Mention of Marriage: for it may be averred to be as well for the one as for the other, for they are not inconſiſtent. *R. Dy.* 147, 8.

So, if an Huſband conveys to *A.* and afterwards there is a Recovery againſt *A.* and a Settlement to Huſband and Wife in Tail, *&c.* it ſhall be within the Statute, for the Whole makes but one Conveyance. *Mo.* 718.

So, if an Huſband ſettles Land to the Wife for Life, *&c.* and afterwards the Huſband and Wife levy a Fine, make a Mortgage, and limit the Remainder to the Heirs of the Body of the Wife; it ſhall be within the *St.* 11 *H.* 7. tho' by a ſubſequent Conveyance. *Semb.* 2 *Ver.* 489.

So, if a Truſt or Equity of Redemption be ſettled upon a Wife and the Heirs of her Body, it ſhall be within the Statute. 2 *Ver.* 489.

But

(A. 6.) What not.

But if Land be given to Husband and Wife and their Heirs in Fee, and the Wife survives, an Alienation by her is not within the *St.* 11 *H.* 7. 20. For an Estate, which may descend to a collateral Heir, and is not a Provision for the Issues of the Marriage, was not intended within the Statute. *Semb. Dy.* 248. *a. R. Cro. El.* 524. *Mo.* 716.

So, if it be to a Wife in Tail general, Remainder to a Stranger in Fee. *R.* 1 *Le.* 261. *Cro. El.* 2.

So, if the Inheritance of the Wife be settled by Fine, *&c.* to the Use of Husband and Wife in Tail; this is not within the *St.* 11 *H.* 7. 20. *R. Bend. pl.* 266. *R. Cro. El.* 524. *Co. L.* 366. *a. R. Plo.* 464.

Tho' the Husband paid the Charge of the Settlement. *Dal.* 116.

Tho' it be by Fine *Sur Grant & Render. R. Plo.* 464.

So if the Estate be settled by an Ancestor of the Wife, to the Use of the Husband and Wife in Tail, *&c. Dal.* 116.

Or, if he makes a Feoffment to *A.* upon Condition, that he shall give back an Estate to the Husband and Wife in Tail. *Mo.* 93.

Tho' *A.* be Father or Ancestor of the Husband. *Plo.* 464. *b.*

So, if a Settlement by an Ancestor of the Wife be, in Consideration of Marriage, and also of Service done by the Husband.

Or, in Consideration of Marriage and Money paid by the Husband. *R.* 2 *Cro.* 624. *Jon.* 254. *R. Cro. Car.* 244. *Jon.* 13.

Tho' the Money be to the Value of the Land: for the Marriage is the principal Consideration. *R.* 2 *Cro.* 624. *Jon.* 254.

So, if Husband and Wife levy a Fine of Land of the Wife, and the Cognisee grants a Rent to them in Tail, and the Wife after the Death of the Husband aliens the Rent. *R. Cro. El.* 2.

So, if a Man and Woman Joint-tenants intermarry, and settle Land to themselves in Tail, *&c.* it is not within the Statute for the Moiety of the Wife; tho' the Joint-Estate was by the Gift of an Ancestor of the Husband. *R. Mo.* 715.

So, if a Stranger, for Service of the Husband, conveys Land to Husband and Wife (who was his Cousin) upon their Marriage, in Tail, *&c. Dub. Mo.* 683. *But afterwards in the same Case R. acc.* for it was a Recompence to the Husband, and not a Purchase by him within the Intent of the Statute. *Yel.* 101. 2 *Cro.* 174.

So, if Husband and Wife exchange Lands, it is not a Purchase of the Husband. *Dal.* 116.

(A. 7.) What Alienations shall be within the Statute.

Every Alienation which makes a Discontinuance will be within the *St.* 11 *H.* 7. 20. be it by Feoffment, Fine, or Common Recovery, tho' Husband and Wife are Vouchees or Tenants in the Recovery. *Mo.* 716.

By Release or Confirmation with Warranty. 3 *Co.* 51, 59. *a.*

So, by Demise for 3 Lives, tho' it be not with Warranty: for the Word, *Warranty*, in the Statute ought to be referred to Releases and Confirmations. *R.* 3 *Co.* 50. *b. Cro. El.* 514. *Mo.* 455.

So, if a Woman accepts a Fine *Sur Conuzance*, and thereby grants and renders to *A.* for 1000 Years. *R.* 3 *Co.* 51. *b. R. Mo.* 250. *Cro. El.* 514. 2 *Le.* 168. 2 *And.* 57. *Godb.* 6.

So, if a Woman intitled to Dower, before Assignment, levies a Fine, *&c.* of it. 2 *Le.* 168.

If a Wife and 2d Husband convey to *A.* and his Heirs, to the Use of him and his Heirs for the Life of the Wife only: for the Limitation for the Life of the Wife regards only the Use. *Per* 3 *J. Cro. El.* 131.

But by *St.* 11 *H.* 7. 20, the ſaid Act ſhall not extend to any Recovery, Diſcontinuance, *&c.* where the Heir, next inheritable to ſuch Woman, or to whom the Inheritance of the ſame Lands belongs next after her Death, be aſſenting thereto, ſo as ſuch Aſſent is of Record or inrolled.

And therefore, if a Wife and the Iſſue in Tail join in a Fine, *&c.* it ſhall not be within the Statute. 3 *Co.* 60. *b.*

So, if a Woman Tenant for Life, and Huſband and Wife in Right of the Wife in Remainder in Tail, join in a Fine. *Dub. Dy.* 89. *b.*

So, if the Iſſue alien by Fine, Recovery, *&c.* and afterwards the Woman releaſes with Warranty, to the Alienee; it ſhall not be within the Statute; for it is intended to compleat the Act of the Iſſue. *R.* 3 *Co.* 60.

So, if the Woman aliens to the Iſſue himſelf in Fee. *Yel.* 101.

So, if the Huſband himſelf, who made the Jointure, and his Wife join in a Fine, *&c.* it is not within the Statute. *Cont. Co. L.* 365. *b.* *R. acc.* 2 *Cro.* 475.

So, if a Woman leaſes for 21 Years, it is not an Alienation within the Statute, tho' not warranted by the *St.* 32 *H.* 8. for it is an uſual Term. *Jon.* 60.

(A. 8.) Who ſhall take Advantage.

If a Woman Tenant in Tail, by the Gift of her Huſband or his Anceſtor, diſcontinues contrary to the *St.* 11 *H.* 7. 20. his Iſſue inheritable to the Entail ſhall take Advantage of the Forfeiture by this Statute.

If a Gift be to Huſband and Wife in Tail, Remainder to the Huſband in Fee, who has Iſſue, and dies, and the Wife makes a Diſcontinuance, and the Iſſue had granted his Remainder in Fee to *A*; yet the Iſſue, and not *A.* ſhall enter for the Forfeiture. *R.* 3 *Co.* 51. *a.* *Mo.* 455.

If the Iſſue, who has a Remainder expectant in Fee, aliens by Fine to *A.* then *A.* ſhall enter: for by the Fine, his Intereſt in the Entail is barred and extinct. *R.* 3 *Co.* 51. *Cro. El.* 514. *Mo.* 455.

If the Iſſue releaſes to a Diſſeiſor of the Wife, to whom the Wife afterwards releaſes with Warranty, (which makes a Diſcontinuance;) tho' the Iſſue cannot enter againſt his Releaſe, yet his Iſſue ſhall enter. 3 *Co.* 59. *a.*

Yet when he, who had the Intereſt at the Time of the Forfeiture, is diſabled to take Advantage of it, by Fine or Recovery; his Iſſue, *&c.* ſhall never take Advantage of it. *R.* 3 *Co.* 61. *a.*

So, if there be a Daughter at the Time of the Forfeiture, and a Son is born afterwards; he ſhall take Advantage of the Forfeiture, tho' the Daughter had diſabled herſelf by Fine, Recovery, or other Act. 3 *Co.* 61. *b.*

So, if the Daughter had joined with the Wife in the Fine, *&c.* by which ſhe diſcontinued. 3 *Co.* 61. *b.*

So, if the Daughter enter for the Forfeiture, the Son afterwards born ſhall enter upon her. 3 *Co.* 61. *b.*

So the next in Remainder or Reverſion, if there be no Iſſue, ſhall take Advantage of the Forfeiture.

If a Woman Tenant for Life joins with a Remainder-Man for Life, in a Feoffment, the ſubſequent Remainder-Man ſhall enter. 1 *Leo.* 262.

But a Fine, Recovery, Feoffment, *&c.* which makes a Diſcontinuance, ſhall be void only as againſt him who has the Intereſt, *&c.* to enter. *R.* 3 *Co.* 59. *b.* *D. Hob.* 166.

And when he enters, he ſhall be in *paramount* his former Eſtate, and ſhall not be in Ward, tho' within Age. *R. Dy.* 362. 3 *Co.* 62. *a.* Yet he ſhall take in Right of the Entail, and *quaſi* by Deſcent. *Hob.* 337.

And ſhall have only for the Life of the Huſband; tho' Huſband and Wife diſcontinue by Fine. *Dub. Dy.* 362. *a.* *Acc.* 3 *Co.* 62. *a.*

So, if a Woman with her 2d Husband aliens to the Issue, who by Fine conveys to *B.* and after the Death of her Husband the Woman enters and avoids her Alienation, and then discontinues; *B.* shall not take Advantage: for a new Right did not accrue after the Fine. *R. Yel.* 101. 2 *Cro.* 175.

## (B) What Alienation makes a Discontinuance.

A Discontinuance by Tenant in Tail may be made by 5 Manners of Conveyance; As, by Fine, Common Recovery, Feoffment, Release, or Confirmation with Warranty. *Co. L.* 325. *a.*

And therefore, if Tenant in Tail levies a Fine or suffers a Common Recovery with a single Voucher; this makes a Discontinuance of the Estate Tail, and puts him in Reversion or Remainder to his Action. *Vide Co. L.* 325. *a.*

If he suffers a feigned Recovery by Default. *Co. L.* 356. *a.* 361.

If he levies a Fine, or Recovery in *Antient Demesne*. *R. Lut.* 781.

So, if he makes a Feoffment: for in Respect of the Livery the Estate is devested, and the whole Fee passes; by which the Issue, and by Consequence he in Reversion and Remainder are put to their Action, and cannot enter. *Co. L.* 327. *b.* *Dy.* 363. *a.*

Tho' the Feoffment be by *Parol*. *Co. L.* 330. *b.*

So, if he makes a Lease to *A.* for Life, Remainder to *B.* in Fee: for the Whole is one Estate, and passes by the same Livery. *Co. L.* 333. *b.*

Or, a Lease for Years, Remainder in Fee. *Lit. S.* 631.

So, if he leases for Years, and afterwards makes a Feoffment in Fee. *R. Mo.* 91, 281.

Or, levies a Fine. *Co. L.* 332. *b.* *Vide Post*, (C. 3.)

If he leases for Life, and afterwards enters upon his Lessee, and makes a Feoffment, and the Lessee re-enters. *Mo.* 281.

So, if Lessee for Life surrenders to him, or he recovers for Waste, or enters for a Forfeiture, and afterwards makes a Feoffment, *&c.* *Co. L.* 333. *b.*

So, if Tenant in Tail makes a Lease not warranted by *St.* 32 *H.* 8. 28. for the Life of another; it will be a Discontinuance. *R.* 1 *Rol.* 633. *l.* 10, 35. 2 *Rol.* 59. *l.* 1.

So, if Tenant in Tail releases with Warranty, which descends upon the Issue; it shall be a Discontinuance, for the Safeguard of the Warranty, which would be destroyed if the Issue might enter. *Lit. S.* 601. *Co. L.* 328. *a. b.*

So, if Tenant in Tail leases for Life, and afterwards grants the Reversion in Fee with Warranty, which descends upon the Issue with Assets; it shall be a Bar to him, tho' his Right of Entry was not taken away. 1 *Sal.* 245. *R. Cro. Car.* 156. *Jon.* 209.

So, if Tenant in Tail be disseised, and releases to the Disseisor, with Warranty: for this is tantamount to a Feoffment. *Mo.* 256.

So, if Tenant in Tail makes a Discontinuance for Life, *&c.* whereby he has a new Reversion, and he afterwards grants his Reversion in Fee, which takes Effect in his Life; it shall be a Discontinuance in Fee: for it is a Continuance of the first Act, which was with Livery. *Co. L.* 333. 1 *Sal.* 244.

Whether it takes Effect by the Death, Surrender, or Forfeiture of the Discontinuee for Life. *Co. L.* 333. *b.*

So, if he releases to the Discontinuee for Life, and his Heirs: for it is executed immediately. *Co. L.* 333. *b.*

If he gives to *A.* in Tail, and afterwards releaſes to him and his Heirs; if *A.* dies without Iſſue in the Life of Tenant in Tail. *Co. L.* 333. *b.*

If he grants the Reverſion to the Uſe of another in Fee, and this takes Effect in his Life. *Co. L.* 333. *b.*

Or, bargains and ſells by Deed indented and inrolled. *Co. L.* 333. *b.*

*Vide Poſt*, (C. 5, 7.)

## (C) What not.

### (C. 1.) If the Eſtate be not deveſted.

(C. 1) As, by a Releaſe, &c. without Warranty.

BUT a Conveyance which does not operate by Tranſmutation of the Eſtate or Poſſeſſion, generally, does not make a Diſcontinuance: for it can only be where the Eſtate is diſplaced and turned to a Right. *Co. L.* 327. *b.*

And therefore, if Tenant in Tail conveys by Leaſe and Releaſe to another in Fee, in Tail, or for Life, it ſhall not be a Diſcontinuance: for nothing paſſes but that which Tenant in Tail may lawfully do, *viz.* for his own Life. *Lit. S.* 606. *Vide Poſt*, (C. 4.)

So, if he leaſes to another for his own Life, or for Years, and afterwards confirms the Eſtate of the Leſſee, for Life, or in Tail, or Fee. *Lit. S.* 607, 609, 619.

So, if Tenant in Tail releaſes to his Diſſeiſor, without Warranty, all his Right. *Lit. S.* 598, 600.

(C. 2) Or, if the Warranty does not deſcend upon the Iſſue in Tail.

So a Releaſe, *&c.* with Warranty, ſhall not be a Diſcontinuance, if the Warranty does not deſcend upon the Iſſue in Tail: As, if a Man has a Son by a firſt Wife, and Land is given to him and a 2d Wife and the Heirs of their Bodies; he is afterwards diſſeiſed, and releaſes to the Diſſeiſor, with Warranty; this does not make a Diſcontinuance: for the Warranty ſhall deſcend to his Son by the firſt Venter. *Lit. S.* 602.

Or, if the Land be of the Nature of *Borough-Engliſh*, and he has 2 Sons: for the Warranty deſcends upon the Heir at the Common Law. *Lit. S.* 603.

*Vide Garranty*, (I. 2.)

(C. 3.) By a Conveyance of that which lies in Grant.

So a Grant of Tenant in Tail does not make a Diſcontinuance; As, if he grants in Fee, *&c.* a Reverſion after a Leaſe for Life, or for Years; for nothing paſſes except for the Life of Tenant in Tail. *Lit. S.* 608, 612, 619.

Tho' the Grant be inrolled. *Co. L.* 330. *b.*

And if the Leſſee attorns, *Co. L.* 330. *b.*

So, if Tenant in Tail grants all his Eſtate. *Lit. S.* 613.

Tho' Livery of Seiſin be made upon ſuch Grant. *Lit. S.* 613.

So, if Tenant in Tail in Remainder grants his Eſtate in Fee, *&c.* *Lit. S.* 615.

Or, makes a Feoffment of it, within the Aſſent of the Tenant for Life: for his Aſſent is not a Surrender. *R. Carth.* 110.

So, if he diſſeiſes Tenant for Life, and afterwards makes a Feoffment in Fee: for he was not ſeiſed in Tail. 1 *Rol.* 634. *l.* 30.

So, if Tenant in Tail of any Thing which lies ſolely in Grant, makes a Grant of it in Fee, *&c.* it ſhall not be a Diſcontinuance: As, if he grants a Rent, Common, Advowſon, *&c.* *Lit. S.* 616, 617.

So, if Tenant in Tail of a Reverſion, Remainder, Rent, Common, or other Thing which lies in Grant, levies a Fine of it in the King's Court, it does

does not make a Diſcontinuance: for nothing paſſes but for his own Life. *Lit. S.* 618. *R.* 2 *And.* 110.

If the Reverſion be after a Leaſe for his own Life. *Co. L.* 332. *b.*

But if it be after a Leaſe by him for Years, it will be a Diſcontinuance: for then the Freehold paſſed by the Fine, and all the Eſtates are diſplaced. *Co. L.* 332. *b.* *Vide Ante*, (B.)

So, if Tenant in Tail grants a Thing, which lies in Grant only, with Warranty, which deſcends upon the Iſſue; it ſhall not be a Diſcontinuance. *Co. L.* 332. *b.*

Tho' he leaves Aſſets in Fee. *Co. L.* 332. *b.*

So, if Tenant in Tail of a Rent diſſeiſes the Terre-tenant, and makes a Feoffment with Warranty; it ſhall not be a Diſcontinuance of the Rent, tho' the Warranty extends to it. *Co. L.* 332. *b.*

But a Grant of a Reverſion by Tenant in Tail, after a former Diſcontinuance for Life, *&c.* if it takes Effect in his Life, enlarges and continues the firſt Diſcontinuance. *Co. L.* 333. *Vide Ante*, (B.)

(C. 4.) By a Conveyance which has not Livery.

So a Conveyance of Lands and Tenements which operates by the Execution of the Deed, without other Ceremony, ſhall not be a Diſcontinuance; As, if Tenant in Tail exchanges Land: for it paſſes by the Deed, without Livery. *Co. L.* 332. *b.*

So, if a Man Tenant in Tail deviſes his Land by his Will, it does not make a Diſcontinuance: for it does not take Effect in his Life-time. *Lit. S.* 624.

If he conveys by Leaſe and Releaſe without Warranty. *Vide Ante*, (C. 1.)

Or, by Bargain and Sale inrolled. *Adm.* 1 *And.* 113. *R.* 3 *Leo.* 16.

So, if Tenant in Tail covenants to ſtand ſeiſed to the Uſe of another in Fee. 1 *Le.* 110.

So, if Tenant in Tail in Remainder, or ſuch a Perſon as could not make a Diſcontinuance by Feoffment, releaſes to a Diſſeiſee, with Warranty. *R. Mo.* 256.

Or levies a Fine, and dies without Iſſue in the Life of Tenant for Life. *R.* 2 *And.* 110. *R. Lat.* 65.

So, if the King Tenant in Tail grants Lands by his Letters Patent; it does not make a Diſcontinuance. *Co. L.* 332. *b.*

If a Copyholder Tenant in Tail ſurrenders in Fee, *&c.* it does not make a Diſcontinuance. 1 *Rol.* 632. *l.* 25. *Vide Copyhold*, (E.)

So, if an Huſband ſeiſed in Right of his Wife, of a Copyhold, ſurrenders in Fee. *R.* 4 *Co.* 23. *a.* 1 *Rol.* 632. *l.* 35. *Vide Copyhold*, (E.)

(C. 5.) To him in Reverſion or Remainder, or with him.

So, if Tenant in Tail conveys to him, who has the immediate Remainder or Reverſion dependant upon the Eſtate Tail; it does not make a Diſcontinuance. *Lit. S.* 625, 626. 1 *Rol.* 633. *l.* 45.

So, if Tenant for Life, and he in the Remainder in Tail, join in a Fine; it ſhall not be a Diſcontinuance: for each gives that which he lawfully may. *R.* 1 *Co.* 76. *R. Cro. El.* 827. *Mo.* 634. *Ow.* 130.

So, if a Reverſion or Remainder be in the King, and Tenant in Tail makes a Feoffment, *&c.* it ſhall not be a Diſcontinuance: for the Reverſion in the King cannot be deveſted, and without deveſting all Eſtates, there can be no Diſcontinuance. *Co. L.* 335. *a.*

So, if there be Tenant for Life, Remainder to his Wife for Life, Remainder to the Heirs of their Bodies, Remainder to *A.* in Fee, and Huſband and Wife levy a Fine to *B.* in Fee; this is not a Diſcontinuance to the Eſtate

Eſtate of *A.* which was not deveſted by the Fine: for the Eſtate Tail was not executed in the Tenant for Life. *R. per* 3 *J.* 1 *Lev.* 37.

So, if there be Tenant for Life, Remainder to *B.* in Tail, and they make a Leaſe for 3 Lives; for it is the Leaſe of the Tenant for Life, and the Confirmation of *B.* *R. Cro. El.* 56.

Tenant for Life, Remainder to the Heir of *B.* in Tail, Remainder to *C.* in Tail; if the Tenant for Life and *C.* in the Life of *B.* levy a Fine, it will not be a Diſcontinuance: for by Fine or Feoffment before the Contingency, the Contingent Remainder is prevented. 2 *Sand.* 386.

But if Tenant in Tail conveys to him in Reverſion and a Stranger, it ſhall be a Diſcontinuance of the Whole. *Co. L.* 335. *a.*—If he who is the Stranger ſurvives, otherwiſe not. *Cro. Car.* 406.

Or, to him in Reverſion, when there is a meſne Remainder in Tail, or for Life. *Co. L.* 335. *a.* 1 *Rol.* 634. *l.* 2.

So, if Tenant in Tail, Remainder to *B.* in Tail, Remainder to *C.* in Tail, *&c.* joins with *C.* in a Feoffment and Fine; it will be a Diſcontinuance: for there is a meſne Remainder in *B.* *R. Cro. Car.* 321. *Jon.* 324. 1 *Rol.* 632. *l.* 50.

So, if Tenant in Tail and he in Reverſion join in a Leaſe not warranted by *St.* 32 *H.* 8. 28. it ſhall be a Diſcontinuance, tho' the Tenant in Tail dies without Iſſue before the Leaſe determines. *R. per* 3 *J. Croke Cont. Cro. Car.* 387, 405. 1 *Rol.* 633. *l.* 10 *Jon.* 359. *Hut.* 126.

## (C. 6.) If the Diſcontinuor be an Infant.

So, if Tenant in Tail within Age makes a Feoffment, *&c.* it ſhall not be a Diſcontinuance: for he may avoid it by his Entry; and that which he himſelf ſhall avoid ſhall not hurt others; and therefore if he dies, the Iſſue in Tail may enter. *Lit. S.* 633, 635.

So, if Joint-tenants within Age make a Feoffment, the Survivor ſhall enter into the Whole. *Lit. S.* 634.

## (C. 7.) Or, was never ſeiſed by Force of the Entail.

So there ſhall not be a Diſcontinuance by him who was never ſeiſed by Force of the Entail: As, if the Grandfather be diſſeiſed by the Father, who makes a Feoffment, and dies; the Feoffment never ſhall be a Diſcontinuance, becauſe the Feoffor was not ſeiſed of the Entail. *Lit. S.* 637.

Tho' the Father ſurvives the Grandfather: for tho' he himſelf cannot enter againſt his own Feoffment, his Iſſue may. *Co. L.* 339. *a.*

So, if Tenant in Tail diſcontinues for Life, and dies, his Iſſue grants the Reverſion in Fee, which takes Effect in his Life-time; this ſhall not be a Diſcontinuance: for he was not before ſeiſed by Force of the Entail. *Lit. S.* 638.

Tho' the Grant of the Reverſion was, with Warranty. *Co. L.* 339. *b.*

So, if the Iſſue inheritable to an Entail makes a Feoffment in the Life of his Anceſtor, it ſhall not be a Diſcontinuance. *Lit. S.* 640, 641.

If he in Remainder in Tail after an Eſtate for Life, diſſeiſes the Tenant for Life, and makes a Feoffment. *Lit. S.* 658. For tho' the Remainder was veſted in him, yet he was not ſeiſed in Tail. *Co. L.* 347. *b.*

If Tenant for Life, Remainder to *B.* in Tail, join in a Fine to *C.* in Fee. *R. Cro. El.* 827, 8.

If a Woman Tenant for Life intermarries with him in Remainder in Tail, and Huſband and Wife join in a Fine. *R. Mo.* 634. *Cro. El.* 827.

So, if the eldeſt Son inheritable by the Entail enfeoffs *A.* againſt whom a Recovery is had, in which the Feoffor was vouched, and then dies, in the Life of Tenant in Tail, without Iſſue; it ſhall not be a Diſcontinuance to the younger Son. *R.* 1 *And.* 44.

But there is no need that the Perſon be ſeiſed by Force of the Entail at the Time of the Diſcontinuance, if he ever was ſeiſed by Force of it. *Co. L.* 339.

So a Feoffment with Warranty by Iſſue inheritable to the Entail, tho' he was never ſeiſed of it, may have the Effect of a Diſcontinuance. *Co. L.* 339. *a.*

So a Fine by him in Remainder in Tail after a Term for Years, during the Term, ſhall be a Diſcontinuance, tho' he is not Tenant in Tail in Poſſeſſion. *Per Coke*, 1 *Rol.* 188.

So, if there be Tenant in Tail after an Eſtate to *A.* for Life, and *A.* makes a Feoffment to the Uſe of himſelf for Life, Remainder to the Tenant in Tail in Fee, and afterwards *A.* and the Tenant in Tail enter, and make Livery to *B.* it will be a Diſcontinuance: for by the Entry of the Tenant in Tail, (which ſhall be adjudged an Entry for the Forfeiture,) he was ſeiſed in Tail, and then a Feoffment by him and *A.* to *B.* made a Diſcontinuance. *Per* 2 *J. Clench Cont.* 1 *Leo.* 127. *Cro. El.* 135.

So, if an Eſtate be given to Huſband and Wife and the Heirs of the Body of the Huſband, and they join in a Feoffment and Fine; it will be a Diſcontinuance: tho' the Wife had a joint Eſtate for Life with the Huſband, and therefore he had not an abſolute Seiſin of the Eſtate Tail. *R. per* 3 *J. Jones cont. Cro. Car.* 321. *Jon.* 323. 1 *Rol.* 632. *l.* 47.

## (C. 8.) If the Diſcontinuance was not executed in his Life-time.

So, if the Act, by which the Diſcontinuance is made, does not take Effect in the Life of Tenant in Tail, there ſhall be no Diſcontinuance;

As, if a Fine be levied by which the Tenant in Tail grants and renders his Land to *B.* in Fee; it ſhall not be a Diſcontinuance if the Tenant in Tail dies before Execution. *Co. L.* 333. *b.* 1 *Rol.* 632. *l.* 45.

So, if Tenant in Tail diſcontinues for Life or in Tail, and afterwards grants the Reverſion in Fee; the Grant does not make, or enlarge the former Diſcontinuance, if it does not take Effect in his Life-time. *Lit. S.* 622.

Tho' the Grant be with Warranty. *Co. L.* 333. *b.*

So, if he diſcontinues for Life by Fine with Warranty, and afterwards levies another Fine with Warranty to himſelf and his Heirs; the laſt Fine did not make another Diſcontinuance: for the Uſe being to himſelf, the Warranty was extinct. *R.* 1 *Sal.* 244.

So, if the laſt Fine was to *A.* and his Heirs, it would not be a Diſcontinuance, if the firſt Diſcontinuee for Life did not die before the Tenant in Tail. *R.* 1 *Sal.* 244.

If *A.* Tenant in Tail enfeoffs *B.* who reenfeoffs *A. C.* and *D.* to the Uſe of *A.* for Life, Remainder to his Son in Fee, and a Recovery is had againſt *A.* who dies, and *C.* and *D.* enter; the Diſcontinuance ceaſes with the Life of *A.* *R.* 1 *And.* 44.

So, if the Grantee of a Reverſion grants it to *B.* and then the Diſcontinuee for Life dies in the Life-time of the Tenant in Tail, and *B.* enters; it ſhall not be a Diſcontinuance, becauſe *B.* does not take by the Grant of Tenant in Tail himſelf. *Co. L.* 333. *b.*

Or, if the Grantee dies without Heir, by which the Reverſion eſcheats, and then the Diſcontinuee for Life dies, and the Lord enters. *Lit. S.* 642.

So, if it be not executed by lawful Means; As, if Tenant in Tail diſſeiſes a Diſcontinuee for Life, and makes a Feoffment, and then the Diſcontinuee dies, in his Life-time; the Feoffment ſhall not be a Diſcontinuance. *Co. L.* 333. *b.*

### (C. 9.) If his Act was lawful.

So a Common Recovery by Tenant in Tail, as Vouchee, is not a Diſcontinuance, but a Bar to the Entail and all Remainders and the Reverſion. *Vide Eſtates,* (B. 27, &c.)

So a Fine by Tenant in Tail is a Bar to his Iſſue, and a Diſcontinuance only to thoſe in Remainder or Reverſion. *Vide Eſtates,* (B. 25.)

So now, by *St.* 32 *H.* 8. 28. a Leaſe for 3 Lives purſuant to the ſame Statute does not make a Diſcontinuance. *Co. L.* 333. *a. Per* 2 *J.* 1 *Leo.* 299. *R. Cro. El.* 602. *Sav.* 77. *Per* 3 *J.* 4 *Leo.* 191.

So, if Tenant in Tail leaſes for 100 Years or more; it does not make a Diſcontinuance: for the Leaſe determines by his Death. *Lit. S.* 622.

So Partition made by Parceners in Tail does not make a Diſcontinuance. *Lit. S.* 260.

So, if Tenant for Life or for Years makes a Feoffment, *&c.* it ſhall not be a Diſcontinuance, but a *Diſſeiſin.* * (* Qu. Forfeiture.)

Yet a Recovery againſt Tenant for Life, by Default, upon a falſe Title, makes a Diſcontinuance to the Reverſion or Remainder. *Lit. S.* 674, 688.

## (D) The Effects of a Diſcontinuance.

EVERY Diſcontinuance deveſts the Eſtate Tail, and all Remainders and the Reverſion depending upon it. *Co. L.* 327. *b.*

But if Huſband and Wife join in a Leaſe for Life of the Land of the Wife, rendring Rent, the Reverſion was not out of the Wife. *Co. L.* 333. *a.*

So, by a Diſcontinuance for Life or in Tail, the Tenant in Tail gains a new and tortious Reverſion in Fee to himſelf: for being deveſted out of the Donor, *&c.* and not granted to the Diſcontinuee, it remains in the Diſcontinuor. *Lit. S.* 620.

And this Reverſion deſcends to the Heir General, not to the Heir in Tail. *Lit. S.* 623.

But if the Diſcontinuance determines in the Life of the Tenant in Tail; the tortious Reverſion vaniſhes, and he ſhall be Tenant in Tail as before. *Co. L.* 333. *a.*

## (E) When it ſhall be determined.

IF the Eſtate of the Diſcontinuee determines, or is defeated; the Diſcontinuance is purged: As, if a Diſcontinuee for Life dies, or in Tail, dies without Iſſue, in the Life of Tenant in Tail. *Vide Co. L.* 333. *a.*

If the Diſcontinuance be for 3 Lives, which die. *R. Lut.* 781.

So, if the Eſtate of the Diſcontinuee be forfeited or ſurrendered. *Lit. S.* 636.

Or, defeated by Entry for a Condition broken. *Lit. S.* 632.

If the Diſcontinuee reenfeoffs the Diſcontinuor. 3 *Leo.* 10.

But

But if there be a Diſcontinuance with Warranty, and the Diſcontinuee makes a Leaſe, and afterwards conveys to the Diſcontinuor, who dies; his Heir ſhall not avoid the Leaſe, tho' the Warranty be determined by the Reconveyance. 3 *Leo.* 10.

When a Diſcontinuance ſhall be avoided by Remitter, *Vide in Remitter*, (A. 1.)

# DISCOVERY.

*Vide Chancery*, (2 G. 3.—3 B. 1, 2.—3 I. 1.)

# DISFRANCHISEMENT.

*Vide Franchiſes*, (F. 33, 34.)

# DISJUNCTIVE.

*Vide Condition*, (K. 1, &c.)—*Parols*, (A. 12.)—*Pleader*, (R. 7.)

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# DISMES.

## (A) Tithes; The Nature of them.

TITHES are an Eccleſiaſtical Inheritance, collateral to the Land, and properly due to an Eccleſiaſtical Perſon. *D.* 11 *Co.* 13. *b.*

And becauſe they are collateral they cannot be extinguiſhed by Unity of Poſſeſſion; As, if a Parſon, &c. be ſeiſed of Lands in Right of his Church, if he afterwards aliens them, Tithes are payable. *Mo.* 50. *Vide Poſt*, (D.)

If a Manor or Lands belonged to an Abbot, Prior, &c. to whom a Church was appropriate; after the Diſſolution, the Tithes of the Lands or Copyholds of the Manor ſhould be paid to the Parſon. *R. Mo.* 50, 219.

So they are not extinguiſhed, if the Parſon releaſes to his Pariſhioner all Demands in his Land. *Ow.* 39, 40.

So they cannot be granted by Copy: for they are not Parcel of the Demeſnes of the Manor. *Dub. Cro. El.* 814, 293. *R. Contra, Cro. El.* 413. *Per Rol.* 1 *Rol.* 498. *l.* 10 *Mo.* 355. *Vide Copyhold*, (C. 1.)

So they are an incorporeal Inheritance: and therefore do not paſs by Grant without Deed.

And a Rent cannot be iſſuing out of them. *Co. L.* 47. *a.*

(B) Diver

## (B) Other Ecclesiastical Revenue.

### (B. 1.) Oblations, &c.

OTHER Ecclesiastical Revenues were Oblations, or Obventions, Pensions, and Mortuaries. *Vide Prohibition*, (G. 11.)

Oblations are, *quæcunque a fidelibus offeruntur Deo & Ecclesiæ.* 2 *Inst.* 489.

And they are voluntary, or due by Custom at a certain Time, as upon Marriage, Baptism, Purification of Women, Funerals, &c. *Vide* 2 *Inst.* 659.

And by *Can.* S. *Mepham. Arch. Cant.* made *Anno* 1328. those, *qui in nubentium solemnis, purificationibus, Exequiis, &c. ad unius Denar' vel al' modicæ quantitat' Oblationem Populi Devotionem sunt moliti restringere, &c.* shall be subject to the Pain of Excommunication. *Vide Lind.* 185. *Vide Cod. Ju. Eccl.* 739.

And by *Can. Othoboni, Anno* 1268. *Capellani, &c. universas Oblationes, &c. Rectori Ecclesiæ Matricis restituere debent*, under Pain of Suspension. *Vide Co. Ju. Eccl.* 235.

And now, by *St.* 2 & 3 *E.* 6. 13. All who by the Laws and Custom of the Realm ought to pay Offerings, shall yearly pay them to the Parson, &c. or Farmer of the Parish where he dwells at the 4 most usual Offering Days, or otherwise at *Easter*.

By this Statute all customary Oblations to be paid at Communion, Marriages, &c. ought to be paid.

As to Tenths, First-Fruits, Synodals, Procurations, &c. *Vide Tenths.—Prohibition*, (G. 11.)

### (B. 2.) Glebe.

Every Church of Common Right ought to have a Manse and Glebe. *Vide Ecclesiastical Persons*, (C. 9.)

*Gleba, est Terra in qua consistit Dos Ecclesiæ. Lind.* 254.

By *Can.* 1603. 87. Archbishops and Bishops shall procure Terriers of all Glebe, &c. which belong to any Parsonage, Vicaridge, or rural Prebend, to be taken by honest Men of every Parish (of whom the Minister to be one) to be laid up in their Registers. *Vide Cod. Ju. Eccl.* 688.

## (C) To whom due.

### (C. 1.) To the Rector.

ALL Tithes, renewing within a Parish, regularly ought to be paid to the Rector of the same Parish. *Hob.* 296.

And this since the Council of *Lateran*, without Question, *An.* 1215. *Seld. H. of T.* 3 *Vol.* 1150, 1222, 1258.

If there be Rector and Vicar endowed, all Tithes belong to the Rector, which the Vicar does not claim by Endowment or Prescription. *R.* 2 *Bul.* 27.

A Rector by an illegal Presentation, being inducted, shall have Tithes. *Hob.* 302.

But before the Council of *Lateran An.* 1215. Every one might give his Tithes to what Spiritual Person he pleased. 2 *Inst.* 641. 2 *Co.* 44. *b.* But this

was reſtrained, not by a Canon of that Council, but by a Decretal Epiſtle of Pope *Innocent* 3d. *Cod. Ju. Eccl.* 690.

So, if Cattle depaſture in a Fenn, *&c.* which is extraparochial, Tithes of the Paſturage are payable to the Rector of the Pariſh where the Owner inhabits, if there be not a Cuſtom for Payment to another. *Sav.* 60.

So, by *St.* 2 & 3 *E.* 6. 13. If it is not known in what Pariſh the Waſt or Common, where the Cattle depaſture, lies.

## (C. 2.) To another Spiritual Perſon.

But, by Cuſtom, a Portion of Tithes in one Pariſh, may be due to the Rector of another Pariſh. 4 *Co.* 35.

So, if the Vicar be endowed with Tithes of Hay, or ſmall Tithes, they ought to be paid to him.

If the Vicar be endowed with Tithes of Hay, and the Land be ſowed with Clover; the Vicar ſhall have the Tithes of the Clover. *R.* (*ut dicitur*) *Carth.* 264. *Skin.* 341.

If a Parſon has Tithes of all Grain, he ſhall have the Tithes of Seed of Clover, tho' the Vicar has the Tithes of the Clover-Graſs. *Skin.* 341.

But a Pariſh-Clerk cannot preſcribe to have Tithes. *R. Mo.* 908.

## (C. 3.) To the King.

Extraparochial Tithes are due to the King. 1 *Rol.* 657. *l.* 15, 20, 30, 35. *Sti.* 137. *Cod. Ju. Eccl.* 691.

And if the King grants them, his Patentee ſhall have them. 1 *Rol.* 657. *l.* 15. *Vide Poſt*, (C. 5.)

But, by Cuſtom, they may be paid to the Parſon, Vicar, *&c.* of ſuch a Pariſh. *Sav.* 60.

So now, by *St.* 2 & 3 *E.* 6. 13. The Tithes of Cattle depaſturing in a Waſt or Common extraparochial, or, if the Pariſh is unknown, are given to the Parſon, *&c.* of the Pariſh where the Owner dwells. 2 *Inſt.* 651.

## (C. 4.) To the Lord of the Manor.

By the Common Law no one was capable to take Tithes in Pernancy, but a Spiritual Perſon, or the King, who is *Perſona mixta*. *R.* 2 *Co.* 44, 45.

Or, the Patentee of the King, by his Prerogative. 2 *Co.* 44. *a.*

Yet by indirect Means, a Layman might take them; As, a Lord of a Manor may preſcribe, in Conſideration that he has paid ſo much to the Rector for all Tithes within his Manor, to take all Tithes within his Manor. *R.* 2 *Co.* 45. *Cro. El.* 599. *R. Cro. El.* 763. *Mo.* 485.

And he ought to preſcribe to have *decimam Garbam*, or *decimum cumulum Granorum*; not *pro decimis Garbarum*: for they are not Tithes properly, but a Profit *aprender*. *R. Cro. El.* 599.

## (C. 5.) To a Patentee.

So now, by *St.* 27 *H.* 8. 28. Patentees of all Manors, Lands, Tenements, Tithes, Penſions, Churches, Portions, *&c.* or other Hereditaments of Abbeys, *&c.* diſſolved heretofore or by this Act, ſhall enjoy the ſame according to the Effect of ſuch Letters Patents; and ſhall have the ſame Remedies, *&c.* as the Abbots, *&c.* could have had.

So, Patentees of Lands, Tithes, *&c.* given to the King by *St.* 31 *H.* 8. 13. 37 *H.* 8. 4. or 1 *Ed.* 6. 14. which by Conſtruction of thoſe Statutes

and the *St.* 32 *H.* 8. 7. and 1 & 2 *Ph. & M.* 8. are become Temporal Inheritances. *Co. L.* 159. *a.*

And by *St.* 32 *H.* 8. 7. and 1 & 2 *Ph. & M.* 8. Thoſe Patentees ſhall have the ſame Remedy for Recovery, *&c.* and the ſame Means for Aſſurance of ſuch Tithes, *&c.* as for other Temporal Inheritances. *Vide Poſt*, (M. 18.—N.)

And may ſue in the Eccleſiaſtical Court for with-holding ſuch Tithes, *&c.* *Vide Poſt*, (M. 2, 3.)

So by *St.* 2 & 3 *Ed.* 6. 13. they may recover the double Value if predial Tithes be not ſet out; *&c.* *Vide Poſt*; (M. 2.)

*Vide Ante*, (C. 3, 4.)

## (D) By whom payable.

ALL Perſons generally ought to pay their Tithes to whom they are due.

And therefore, of Common Right all Lands ought to pay Tithes. 11 *Co.* 15. *a.*

Tho' held *in Capite*. *Mo.* 915.

The Tithes ſhall be paid by the Occupier of the ſame Lands.

If the Owner occupies them, he ſhall pay.

If he leaſes them for a Year, or at Will, *&c.* the Leſſee ſhall pay.

If the Owner or Leſſee ſells the Crop of Graſs or Corn, and the Vendee cuts it, he ſhall pay the Tithes. 2 *Bul.* 184.

So, if the Owner of Wood ſells to another, who cuts it; he ſhall pay.

If the Owner of the Land ſells the Crop, and then purchaſes the Rectory, the Vendee ſhall pay Tithes to him. *R.* 2 *Bul.* 184.

If the Occupier be a Diſſeiſor, *&c.* and ſets out his Tithes, the Parſon may take them; for it is not material whether he has the Poſſeſſion by Right, or by Wrong. *R. Jon.* 89, 90.

But if the Owner conſumes his Herbage by Agiſtment of the Cattle of another; the Owner of the Cattle does not pay the Tithes. 1 *Jon.* 254. 1 *Rol.* 636. *l.* 15.

If a Parſon, *&c.* at Common Law, had enfeoffed another of his Glebe; the Feoffee paid Tithes: for Tithes are not extinguiſhed or ſuſpended by Unity of Poſſeſſion. 11 *Co.* 13. *b.* *Dy.* 43. *a.* *Vide Ante*, (A.)

So now, if a Parſon leaſes his Glebe, the Leſſee ſhall pay Tithes. *Dub. Dy.* 43. *a.* *Per Fenner*; 1 *Rol.* 655. *l.* 42.

Tho' he leaſes it with all Profits belonging, rendring Rent for all Demands to the ſame Rectory belonging. *R.* 11 *Co.* 13. *b.* *Cro. El.* 161. *Cont. per* 2 *J. Mo.* 47. *Act. Dy.* 43. *a. in Marg.* *Cro.* 39. 1 *Leo.* 300.

So, if a Parſon ſells the *Emblements* of his Glebe, the Vendee ſhall pay Tithes. 1 *Rol.* 655. *l.* 45.

If a Vicar ſows his Glebe, and dies before Severance, his Executor ſhall pay. *Dub. Hob.* 188.

If a Parſon leaſes his Rectory, he ſhall pay Tithes to his Leſſee for his other Lands in the ſame Pariſh. 11 *Co.* 14. *a.* *R. Dy.* 43. *a.* *Mo.* 532.

If he leaſes his Rectory, reſerving the Tithes of his own Land, and afterwards grants this Land; the Grantee ſhall pay Tithes. *Semb. Dy.* 43. *a. in Marg.*

But if a Parſon lets his Glebe rendring Rent for Tithes after growing, as well as for other Demands; the Leſſee ſhall not pay Tithes to him. *Semb. Cro. El.* 161.

(E) By

## (E) By whom, not.

### (E. 1.) Not *per Eccleſiam Eccleſiæ.*

ONE Spiritual Perſon, generally, does not pay Tithes to another: As, if a Vicar be endowed of Glebe and ſmall Tithes; he ſhall not pay Tithes of his Glebe to the Parſon. *R. Cro. El.* 479, 579. *Sav.* 3.

So a Parſon ſhall not pay Tithes to the Vicar, for his Glebe. *Mo.* 457.

So, if a Vicar be endowed of ſmall Tithes, generally, the Parſon ſhall not pay ſmall Tithes to the Vicar. *R. Cro. El.* 578. *Mo.* 910.

Tho' the Endowment be of the ſmall Tithes of the whole Pariſh. *R. Cro. El.* 578. *Mo.* 910.

So a Patentee of a Parſonage ſhall not pay: for the Parſonage being diſcharged at the Time of the Endowment, and afterwards at the Diſſolution, the Patentee ſhall have it diſcharged. *R. Cro. El.* 578.

So, if Land be ſevered from the Glebe after Endowment, it ſhall not pay Tithes to the Vicar. *R.* 2 *Rol.* 335. *l.* 10.

But the Leſſee of the Parſon ſhall pay ſmall Tithes to the Vicar. *R. Cro. El.* 479, 578. *Mo.* 910. *Sav.* 3.

So the Parſon himſelf ſhall pay, if the Endowment was of Tithes of the Glebe expreſly, as it might be. *Cro. El.* 578. *Mo.* 910.

Or, the Land comes to the Parſonage after the Endowment. *Vide Mo.* 910.

Or, if the Parſon has Lands not Parcel of the Rectory. 11 *Co.* 14. *a.* *Vide Ante*, (D.)

### (E. 2.) By thoſe who preſcribe *in non decimando.*

(E. 2.) Who may preſcribe. Spiritual Perſons.

So a Spiritual Perſon may preſcribe *in non decimando.* 2 *Co.* 44. *b.* 1 *Rol.* 653. *l.* 10. *Cro. El.* 475. 1 *Leo.* 248.

And therefore, a Biſhop may preſcribe, that he and all his Predeceſſors, ſeiſed of ſuch a Manor in Right of his Biſhoprick, have held the Manor by them and their Tenants, diſcharged of Tithes. *R.* 2 *Co.* 44, 5. 1 *Rol.* 653. *l.* 15. *Cro. El.* 216. 1 *Leo.* 248. *Mo.* 425.

And his Tenant of the Manor, by ſuch Preſcription, may be alſo diſcharged: for the Demiſe does not make the Land chargeable, which was diſcharged before. *R.* 2 *Co.* 45. *a.* 1 *Rol.* 653. *l.* 25. *Cro. El.* 475. 511. *Mo.* 619.

So the Copyholders of the Manor may alledge a Preſcription in the Biſhop for their Diſcharge. *R.* 1 *Rol.* 653. *l.* 40. *Cro. El.* 784. *Mo.* 618. *Yel.* 2.

So a Parſon, having Glebe in another Pariſh, may preſcribe *in non decimando*, for him, his Farmers, and Tenants. *R.* 1 *Rol.* 653. *l.* 30. *Mo.* 531.

So an Abbot, or other Eccleſiaſtical Body, might preſcribe *in non decimando.* *Vide Mo.* 531.

So, if a Manor, Land, *&c.* of a Biſhop, Parſon, *&c.* be granted to another in Fee, and afterwards regranted to the Biſhop and his Succeſſors; the Preſcription is not deſtroyed. *R.* 1 *Leo.* 248. *Cro. El.* 216.

(E. 3.) The King.

So the King may preſcribe *in non decimando*: for he is *Perſona mixta.* *R. Jon.* 387. *R. Hard.* 315. *Mo.* 486.

As, for Tithes of the Lands of a Foreſt, tho' they are within a Pariſh. *Sti.* 137. *R. Ca. Eq.* 230.

Tho' the Land be demiſed at the King's Will. *Mo.* 915.

But the King's Patentee ſhall not have the ſame Privilege. *R. Jon.* 387. *Cro. Car.* 94. 1 *Rol.* 655. *l.* 25. *Hard.* 315.

So, without a particular Preſcription, the King ſhall not be diſcharged of Tithes for the antient Demeſnes of the Crown. *R. Hard.* 315. *Semb. Sti.* 137.

So, when diſcharged by Preſcription, if he aliens the Land, the Preſcription is deſtroyed: and therefore, if afterwards the ſame Land, by Eſcheat, *&c.* comes back to the Crown, it ſhall not be diſcharged of Tithes. *R. Hard.* 315.

So a Leſſee for Life or Years of the King, ſhall not have the ſame Privilege. *Mo.* 915. *Q.* if this does not relate to Monaſtery-Land? *Vide Poſt*, (E. 7.) *R.* that a Leſſee for Years of the King, rendring Rent, ſhall have Privilege, if the King preſcribes for him and his Tenants to be diſcharged. *Per Cur. Exch. M.* 6 *Geo.* 2. *inter Williams* and *Petchy.*

(E. 4.) A County, *&c.*

So a County may preſcribe *in non decimando.* 1 *Rol.* 653. *l.* 50.

So a Country, as the *Weld of Kent*, or *Suſſex*, may preſcribe in Non-payment of Tithes of Wood. 1 *Rol.* 653. *l.* 52. 654. *l.* 5. 2 *Rol.* 122. *Pal.* 37. 2 *Inſt.* 645, 653.

So, an Hundred. *Semb.* 1 *Rol.* 654. *l.* 30. *Mar.* 25. *pl.* 59.

So a Man may preſcribe, that by the Cuſtom of the Country where he lives, no Tithes are paid for the Milk of Ewes. *R.* 1 *Rol.* 654. *l.* 15.

That by Cuſtom a Baker does not pay Tithes for Grain which he grinds in his Mill for his Trade, whereby the Parſon has more ample Tithes: for this is but a perſonal Tithe. *R.* 1 *Rol.* 654. *l.* 20. 4 *Mod.* 337.

But a Pariſh cannot preſcribe *in non decimando.* 1 *Rol.* 653. *l.* 47. 2 *Inſt.* 645. *Mar.* 25. *pl.* 59.

So a Cuſtom *de non decimando* cannot be alledged in an Hundred or Country, for Things which of Common Right ought to pay Tithes: As, for Agiſtment of Cattle. *R.* 4 *Mod.* 344. *Sal.* 655. *Carth.* 392. *Skin.* 560.

(E. 5.) Who cannot preſcribe.

But, generally, a Layman cannot preſcribe *in non decimando.* 1 *Rol.* 653. *l.* 5. *R.* 2 *Co.* 44. *Mo.* 425. *Hob.* 297.

As, Churchwardens who have Lands for the Repair of the Church: tho' their Office be Eccleſiaſtical. 1 *Rol.* 653. *l.* 1, 31.

And therefore, if an Abbot and Convent, *&c.* grant Land to a Layman, or are diſſolved, whereby the Lands come to a Layman; tho' the Abbot had preſcribed *in non decimando*, the Layman cannot: for the Privilege is gone. *R. Jon.* 373.

So the Pope by his Bull could not diſcharge a Subject from Payment of Tithes after the Council of *Lateran.* 2 *Inſt.* 653.

Yet if an Abbot, or Prior was ſeiſed of Lands diſcharged of Tithes, the preſent Farmer of ſuch Lands ſhall be admitted to preſcribe *in non decimando* by Force of the *St.* 2 & 3 *Ed.* 6. 13. which ſays, That every Perſon ſhall pay predial Tithes in ſuch Manner as of Right ought to be paid in 40 Years before. *Mo.* 219.

And by that *Stat. S.* 4. No Perſon ſhall be compelled to pay Tithes for Lands, *&c.* by Law or Statute, or by any Privilege or Preſcription not chargeable with Payment of Tithes, or diſcharged by Compoſition real.

And, *per Hobart*, if a Perſon Temporal ſucceeds a Body Spiritual in Diſcharge; he ſhall be reputed as a Perſon or Body Spiritual. *Hob.* 296.

So, where Lands came to the King by the *St.* 31 *H.* 8. 13. Lands diſcharged by Preſcription in the Hands of an Abbot, *&c.* ſhall be diſcharged in the Hands of the King, or his Patentee. *R. Jon.* 373. *Vide Poſt*, (E. 7.)

## E. 7.) By the King, or a Patentee of Lands given to the Crown by the *St.* 31 *H.* 8. 13.

So by the *St.* 31 *H.* 8. 13. (which diſſolves all Houſes of Religion above 200 *l.* a Year Value) the King and his Patentees ſhall hold all Manors, Lands, *&c.* belonging to ſuch Houſes, diſcharged of the Payment of Tithes, as freely as the Abbots, *&c.* held the ſame at the Day of their Diſſolution.

And this Privilege extends to all Lands given to the King by the *St.* 31 *H.* 8. 13.

Tho' they were Lands appurtenant to Abbeys, *&c.* given to the King by the *St.* 27 *H.* 8. 28. but continued by the King purſuant to a *Proviſo* in the ſame Statute, and not diſſolved till the *St.* 31 *H.* 8.

But Lands appurtenant to Houſes of Religion given to the King by the *St.* 27 *H.* 8. 28. which diſſolved the leſſer Abbeys, *&c.* under the Value of 200 *l.* a Year, are not exempted from Payment of Tithes. *Jon.* 3, 185, 370. *R.* 2 *Cro.* 608. *R. Cro. Car.* 425. *Jon.* 370.

Nor Lands, which came to the Crown by the *St.* 37 *H.* 8. 4. or 1 *Ed.* 6. 14. 2 *Co.* 46. *Jon.* 4, 185. *Mo.* 913, 420.

If they are not exempted by a Real Compoſition, or *Modus decimandi*;

Tho' they were after the Diſſolution granted by the King to a greater Abbey diſſolved by the *St.* 31 *H.* 8. *R. Jon.* 3. 2 *Cro.* 608.

Nor Lands, which are veſted in the King by the *St.* 32 *H.* 8. 24. which has the ſame Words as the firſt Clauſe of the *St.* 31 *H.* 8. 13. but not the ſubſequent Clauſe of Diſcharge. *R.* 2 *Cro.* 58. *Cont. per* 3 *J. Jon.* 190. *R. Ray.* 225. *Cont. Acc. Mo.* 913. *Vide Ca. Eq.* 225. *Dub. Godb.* 392. *Bridg.* 32. *Dub.*

An Abbot, *&c.* might be exempt from the Payment of Tithes by the Pope's Bull, by his Order, by Preſcription, by Real Compoſition, or by Unity of Poſſeſſion. *Jon.* 3, 368. 2 *Cro.* 608. *Hob.* 296. *Poph.* 156.

The Pope by his Bull uſed to exempt whom he pleaſed from Payment of Tithes, and ſuch Exemption was allowed for good. *Jon.* 368.

And tho' ſuch Exemption ceaſed by the Diſſolution of the Body to whom granted, being Perſonal; yet if any Abbot, *&c.* had an Exemption by Bull at the Time of the Diſſolution, the Lands ſhall be now exempt by the *St.* 31 *H.* 8. *Per Hob.* 297. *Jon.* 3.

So by divers Grants of the Pope, ſeveral Religious Orders were exempted from the Payment of Tithes, *quamdiu propriis manibus terras colebant. Cod. Ju. Eccl.* 701.

But by Pope *Adrian the 4th* theſe Orders were reduced to *Ciſtercians*, *Hoſpitallers*, and *Templars.* 2 *Inſt.* 652.

To whom the *Præmonſtratenſes* were added by *Innocent the* 3*d*, *A°* 1215. 2 *Inſt.* 652.

And by the Council of *Vienna A°* 1311. 4 *Ed.* 2. the *Templars* are condemned for Hereſy; and 17 *Ed.* 2. their Poſſeſſions given to the King.

And by the *St.* 2 *H.* 4. 4. All Orders, which put a Bull in Execution for diſcharging Lands from Tithes in the Hands of their Tenants or Farmers, incur a *Præmunire.*

And therefore, all Lands which belonged to an Abbey, *&c.* of the Order of *Ciſtercians*, or *Præmonſtratenſes*, (for *Hoſpitallers* were afterwards diſſolved by

by the *St.* 32 *H.* 8. 14. and the *Templars* before by the *St.* 17 *Ed.* 2.) at the Time of the Diſſolution, by Force of the *St.* 31 *H.* 8. 13. ſhall be exempted from Tithes, in the Hands of the King, or his Patentees. *Hob.* 297. *Ow.* 46.

Wood or Meadow as well as Arable. *Dy.* 277. *b. in Marg.*

So they ſhall be exempted in the Hands of the King's Tenant, in Reſpect of his Dignity. *Ow.* 46. 2 *Leo.* 71. for the King does not occupy himſelf; and therefore his Farmer or Tenant ſhall be exempted, if he be Tenant for Years, or at Will, and the Freehold is in the King. *Mo.* 915. *Hard.* 382.

And in the Hands of Tenant in Tail as well as in Fee. *R. Hard.* 174.

Tho' there was a ſubſequent Contract or Covenant by the Abbot, *&c.* after the Council of *Lateran* to pay Tithes. *R. Hard.* 101.

So the Reverſion ſhall be exempted, if they were in the Hands of a Leſſee for Life, or Donee in Tail at the Time of the Diſſolution. *R. Hard.* 190. 4 *Leo.* 47.

Or, in the Hands of a Leſſee for Years who paid Tithes at the Diſſolution. *R. Dy.* 277. *b. R. Pal.* 119. *R.* 2 *Cro.* 559. 2 *Rol.* 142.

But Lands purchaſed by thoſe Orders after the Year 1215 were not exempted, for the Exemption extended only to Lands then in their Poſſeſſion. *Cod. Ju. Eccl.* 701. 2 *Inſt.* 652.

So Lands, which belonged to thoſe Orders, ſhall not be exempted in the Hands of any who has them only for Years, or for Life. *R. Hard.* 174.

So Lands, which eſcheated to an Abbot, and continued in his Hands at the Time of the Diſſolution, ſhall not be exempted. *Semb. Hard.* 190.

Nor, Land, granted in Tail by an Abbot, *&c.* and in the Hands of the Donee at the Time of the Diſſolution. *R. Hob.* 248.

Nor the Lands of a Copyholder, held of a Manor, which was in the Hands of an Abbot at the Time of the Diſſolution. *Mo.* 219, 533, 4.

Nor Lands, exempted in the Hands of an Abbot by Reaſon of his Poſſeſſion, but not diſcharged at the Time of the Diſſolution. *Godb.* 1.

Nor Lands, in which a Man claims *Libertatem falcandi*, as, a Common. *R.* 2 *Bul.* 249.

So an Abbot, *&c.* might waive this Privilege, by Compoſition. *&c. Semb. Hard.* 383.

So where an Abbey, *&c.* was diſcharged by Preſcription at the Time of the Diſſolution, the King, or his Patentee ſhall be now diſcharged by Force of the *St.* 31 *H.* 8. 13. *Cro. El.* 206.

And it is ſufficient to prove the Preſcription, if he gives Evidence that the Abbot, *&c.* did not pay. *R. Cro. El.* 206.

An Abbot, or other Spiritual Perſon, might preſcribe *in non decimando*; tho' a Layman cannot. *R. Cro. El.* 206. *Vide Ante*, (E. 2.)

But an Abbey, *&c.* could not be diſcharged by Preſcription, where it was founded within Time of Memory, *viz.* after the Beginning of the Reign of King *R.* 1. *Hob.* 300.

So, if an Abbey was diſſolved by the Death of the Abbot and all the Monks, the Right to Tithes revived. *R. Godb.* 211.

## (E. 8.) By a Real Compoſition of an Eccleſiaſtical Perſon.

So an Abbot, *&c.* might be diſcharged by a Real Compoſition, as well as a Lay-Perſon. *Vide Poſt*, (E. 21.)

A Real Compoſition was, when Land, *&c.* was given to a Parſon, with Aſſent of the Patron and Ordinary, in Recompence of all his Tithes: by which the Land was diſcharged of Tithes, and a *Modus* paid in Lieu of them. *Jon.* 369.

And

And this Diſcharge went along with the Land, into whatever Hands it came. *Jon.* 369. *Cro. Car.* 423.

So, by a Compoſition between the Convents of two Abbeys *mediantibus Abbatibus*, a Sum of Money might be paid to one Abbey for Tithes of the Lands of the other Abbey. *Sav.* 5.

And if both Abbeys come to the King, his Patentee ſhall have the Compoſition againſt the Patentee of the Lands: for if the Compoſition fails, the Tithes ought to be paid *in Specie*. *R. Sav.* 5.

So, if an Abbot, *&c.* had a Manor and Portion of Tithes, *viz.* Tithes of the ſame Manor *Simul & Semel*, and before Time whereof, *&c. viz.* 25 *H.* 1. granted the Manor and Tithes to *A.* and his Heirs, rendring 5 *s. per Annum*, who Time whereof, *&c.* paying 5 *s.* to the Abbot, and, after the Diſſolution, to the King, have been exempted; it ſhall be a good Diſcharge. *R.* 2 *Mod.* 321. *Skin.* 239.

So a prior Compoſition may be explained by a ſubſequent. *Semb. Hard.* 383.

But an Abbot, *&c.* not paying Tithes at the Time of the Diſſolution; it ſhall not be intended that he was exempted by a Real Compoſition, if it be not ſhewn: but by his perſonal Privilege, which was the uſual Courſe. *R. Per* 3 *J. Cro. cont. Cro. Car.* 423. 1 *Rol.* 654. *l.* 40. *Jon.* 370.

## (E. 9.) By Unity.

So an Abbot, *&c.* might be exempted from Payment of Tithes by a perpetual Unity of Poſſeſſion, *viz.* when an Abbot, *&c.* Time whereof, *&c.* was ſeiſed of Land and alſo of the Rectory of the ſame Pariſh, where the Land lies. *R.* 2 *Co.* 47. *b. Per Dyer* 2 *J. cont. Mo.* 46.

Perpetual Unity was not a Diſcharge *de ſe*: for by the Unity the Tithes, being collateral to the Land, are not extinct; and therefore they are payable, when the Unity ceaſes. *R. Jon.* 3. *Hob.* 297. *Pol.* 5. *R. Mo.* 527, 8. 2 *Cro.* 608.

But if Land was diſcharged in Reſpect of Unity, at the Time of the Diſſolution, it ſhall now be diſcharged by Force of the *St.* 31 *H.* 8. *R.* 2 *Co.* 47. *Dub.* 1 *Leo.* 332. *Sav.* 62. *R. Mo.* 420, 533. *Cro. El.* 584. 2 *Rol.* 251.

Tho' at the Time of the Diſſolution the Land and Rectory were in Leaſe, if the Leſſee did not pay Tithes. *Semb. Pol.* 7.

So, tho' the Leſſee did pay Tithes. *Vide Jon.* 412. *Vide infra.*

Yet Unity is not a Diſcharge of Tithes; but an Exemption only from the Payment of Tithes, and ought to be pleaded accordingly. *Hob.* 298. 2 *Co.* 48.

So Unity does not exempt from Payment of Tithes, if the Unity did not commence by a good Title, and was perpetual. *Semb.* 2 *Co.* 47. *b. Hob.* 298.

Or, if it commenced within Time of Memory: As, if an Abbey, *&c.* was founded, or endowed with the Land and Rectory after the 1ſt Year of *R.* 1. *Hob.* 298. 1 *Rol.* 54. *Yel.* 31.

Or, if the Abbot, *&c.* was not ſeiſed of the Land and alſo of the Rectory in Fee. *Semb.* 2 *Co.* 47. *b.*

If he was ſeiſed of a Manor and Rectory, it does not exempt the Copyholders of the ſame Manor. *Mo.* 219.

Or, if an Abbot, *&c.* or his Tenant or Farmer had at any Time paid Tithes, tho' but Part of his Tithes, and not the Whole. *Hob.* 298. *Pol.* 9. *R.* 2 *Co.* 48. *a.*

Or, if there was not an Unity of Poſſeſſion at the Time of the Diſſolution, but the Land was in Leaſe, and the Leſſee paid Tithes: tho' there was an

Unity of the Freehold and Inheritance of the Land and Rectory. *R. per* 3 *J. Mo.* 534. *Acc. Pal.* 119. *Vide ſupra.*

Or, if an Abbot was ſeiſed of the Land and Rectory in Fee, but not at the Time of the Diſſolution. *Cro. El.* 584.

By Common Law a Spiritual Perſon ought to ſhew ſpecially, how diſcharged, *viz.* by Bull, Compoſition, *&c.* except where he was diſcharged by Preſcription. *R. Hob.* 297. 2 *Co.* 48. *Noy* 97.

So, ſince the *St.* 31 *H.* 8. 13. The King or his Patentee, who pleads a Diſcharge, ought to plead with the ſame Particularity as the Abbot himſelf. *R. Hob.* 298. *Jon.* 6.

And therefore, he ought to plead that the Abbot, *&c.* by Preſcription held the Lands diſcharged of Tithes at the Time of the Diſſolution. *Jon.* 3. *Hob.* 299.

Or ſhew, how diſcharged, *viz.* by Bull, Compoſition, or Unity. 2 *Co.* 48. *b. Hob.* 299. *R.* 1 *Lev.* 185.

And if he alledges Unity, he ought to conclude, *ratione cujus he was diſcharged from Payment of Tithes. Hob.* 298. 2 *Co.* 48.

And nothing can be traverſed but the Unity, not the *Ratione cujus, &c.* 2 *Co.* 48. *Mo.* 534.

## (E. 10.) By a *Modus decimandi.*

(E. 10.) What *Modus* is good. Another Recompence in Diſcharge.

So a Man may preſcribe to be diſcharged from Payment of Tithes, becauſe that a *Modus* has been paid Time whereof, *&c.* in Lieu of the ſame Tithes.

And ſuch *Modus* may commence upon a Real Compoſition. *Jon.* 369.

A Layman as well as a Spiritual Perſon may preſcribe *in modo decimandi. Mo.* 531.

And the *Modus* continues tho' the Land came to the Rector, if they be afterwards ſevered. *Mo.* 531, 2.

And by *St.* 2 *&* 3 *Ed.* 6. 13. No Perſon ſhall be compelled to pay Tithes for any Lands, *&c.* which by Preſcription, *&c.* are not chargeable with the Payment of any ſuch Tithes, or that be diſcharged by any Real Compoſition.

And therefore, a Pariſhioner may alledge a Cuſtom or Preſcription to give Money or other Recompence to the Parſon; and in Conſideration of it, to be diſcharged from Payment of Tithes *in Specie.*

As he, who being Lord of the Manor of *B.* has paid ſuch a Penſion Time whereof, *&c.* to the Parſon, and *ratione inde* has been exempted from Tithes within his Manor. *R. Mo.* 485.

That the Lord has allotted ſo much Wood ot the Parſon; for which he, and his Tenants in the ſame Manor, ought to be exempt from Tithes for their Underwood there.

That the Parſon has ſuch a Wood in the ſame Pariſh rendring 4 *d.* to the Lord, and therefore the Pariſhioners ſhall not pay Tithes of Wood there.

(E. 11.) Another Thing for the Benefit of the Parſon.

So it ſhall be a good *Modus*, That the Pariſhioner has done more than he need do for the Improvement or Melioration of the Tithes for the Benefit of the Parſon, and in Conſideration thereof has been excuſed from Tithes for another Thing: As, that he bound the Corn in Sheaves, and afterwards put it in Stack for the Parſon, and therefore has been diſcharged of Tithes of ſo many Sheaves as are not put in Stack. *Lat.* 226.

So, That every Pariſhioner has uſed at his proper Coſts to make the Graſs of the firſt Mowth into Hay, and then to deliver the Tithe to the Parſon,

and therefore has been excuſed from the Tithes of the Aftermowth. *R.* 2 *Cro.* 42. 1 *Rol.* 648. *l.* 46.

Or, has cut the firſt Mowth, and tedded and diſperſed it, and then gathered it into Wind-rows, and put it in ſmall Cocks; for this is more Labour and Charge than the Law requires. *R.* 2 *Cro.* 42. *Mo.* 758. 1 *Rol.* 648. *l.* 52.

So, That the Pariſhioner has delivered Straw to the Parſon for his Seat in the Church, and therefore has been diſcharged of Tithes for his Hay. *Semb. Cro. El.* 277.

That he pays 5*s.* to the Clerk, by which the Parſon is excuſed from finding a Clerk, and therefore he ought to be exempted from Tithes. *Semb. Cro. El.* 71. *Vide Poſt*, (E. 15.)

So, That the Pariſhioner cuts Tares, *&c.* for the Beaſts of the Plough, or Cows, and therefore does not pay Tithes of them. *R. Cro. El.* 139.

That he pays a halfpenny for the Wool of Sheep ſold between Shearing and *Michaelmas*. *Mo.* 911.

(E. 12.) Tho' the *Modus* be paid to another.

So a *Modus* paid to the Parſon for Hay, in lieu of all Tithes upon the ſame Land, ſhall be a good Diſcharge for Tithes of the ſame Land demanded by the Vicar. *R. Yel.* 86. *Vide Poſt*, (E. 15.)

(E. 13.) Tho' there be ſome Alteration in the Thing for which the *Modus* is paid. *Vid Poſt*, (E. 20.)

So, if there be an Alteration of the Thing for which the *Modus* is paid, the *Modus* continues, if the Thing for which be not deſtroyed: As, if a Current upon which a Mill is erected, be diverted by the Act of God, and the Owner removes his Mill to it, the *Modus* for the Mill remains. 1 *Rol.* 652. *l.* 10.

If a *Modus* be for Tithe of Hay in ſuch a Cloſe, and it is ploughed for 7 Years, and afterwards returns to Hay; the *Modus* continues. 2 *Sho.* 462.

If a *Modus* be of ſo much a Year for Tithes of ſo many Acres of Land in ſuch a Park; the *Modus* continues, tho' the Park be diſparked. *Cro. El.* (467.)

So, if a *Modus* be to pay a Buck and Doe generally, for Tithes of Land in ſuch a Park. *Semb. Ow.* 34.

Or, 2*s.* for Tithes of Land in a Park, and a Shoulder of a Deer. *R. Godb.* 238. *Per Hobart and Nichols*; *Winch and Warb. cont. Hob.* 39. *Mo.* 863. 1 *Rol.* 651. *l.* 51.

(E. 14.) When a *Modus* is not good. If it be not Time whereof, *&c.*

But a *Modus decimandi* is not good, where the Thing for which the *Modus* is alledged to be paid, is not antient: As, a *Modus* cannot be alledged for Tithes of Hops. *R.* 1 *Vent.* 61. 1 *Sid.* 443.

So, if a *Modus* be ſo large, that it is not poſſible to be the Valuation for ſuch Tithes Time whereof, *&c.* As, if he alledges a *Modus* to pay 2*s.* 6*d.* for every Tithe-Lamb. *H.* 9 *W.* 3. *Layfield Rector of Chiddingfold in Surry v. Entiknap.*

To pay 5*s.* an Acre for Tithes of Wheat; 4*s.* for Summer Corn; 3*s.* for Meadow; 2*s.* 6*d.* an Acre for Paſture. *H.* 3 *Geo. Benſon Impropriator of Bromly St. Leonard in Middleſex v. Watkins and others.*

To pay 6*d.* for every Calf, (which in that Country never exceeds 5*s.* Value after 3 Weeks,) *M.* 5 *Geo. Jones Rector of Downham in Cambridgeſhire v. Cawthorn and others. T.* 7 *Geo. Franklin v. the Maſter and Brethren of St. Croſs near Winchester.*

Yet a *Modus* may begin after Endowment *temp. H.* 3. *Semb. Godb.* 180.

So,

So, if a Man alledges a Cuſtom or Preſcription to be diſcharged of the Tithes of ſuch a Particular, in reſpect that he has done what is not more than the Law requires, or no Benefit to the Parſon, it will not be a good *Modus:* As, if he ſays, that he pays Tithes of his Meadow and 2*d.* for every Cow, and therefore ought to be excuſed from Tithes for Hay out of Fens in the ſame Pariſh, which he uſes for Fodder for his Cows. *R.* quia. 2 *Cro.* 47. *Mo.* 683. (E. 15.) If it does not import a Benefit to the Parſon, &c. beyond what the Law requires.

That he is bound by Tenure of ſuch Land to maintain *Navem Eccleſiæ*; and therefore ought to be excuſed: for it is no Benefit to the Parſon. *Vide* 1 *Rol.* 649. *l.* 50.

That he ought to pay ſo much to the Rector, is no Excuſe for Tithes due to the Vicar. *Cro. El.* 71. *Mo.* 907. *R.* 3 *Bul.* 220. *Vide Ante*, (E. 12.)

Or, 5*s. per Annum* to the Pariſh-Clerk, is not a good *Modus* for Tithes to the Rector. *Cro. El.* 71. 276, 7. 1 *Leo.* 94. *Vide Ante*, (E. 11.)

So it is not a good *Modus*, That all the Tenants of a Manor ought to pay ſuch a Rent to the Lord, and therefore ought to be diſcharged of Tithes of all their Lands in any Place.

That he ought to find Straw *pro Nave Eccleſiæ*; and therefore ought to be diſcharged of Tithes for his Hay: for the Parſon need not find Straw. *R. Cro. El.* 276.

That he ought to make the Graſs upon the firſt Mowth into ſmall Cocks; and therefore ſhall be diſcharged of Tithes of the After-mowth: for it is no more than by Law he ought to do. *R. Mo.* 758.

That the Tenants of a Manor are diſcharged, &c. becauſe they pay ſo much Quit-Rent to their Lord. *R.* 1 *Sid.* 258.

Or, maintain a Chaplain in the Church of *D.* without ſhewing, that it is in the Pariſh where the Manor lies. *Semb.* 1 *Rol.* 2.

That he pays 1*d.* for every Milch-Cow, and a halfpenny for every other Cow, for Tithes of all Cows, Oxen, Steers, Calves. *R. Cro. El.* 446. *Vide Poſt*, (E. 16.)

Or 1*d.* for every Mare, for Tithes of all Horſes, Mares, Colts. *Cro. El.* 446.

That for Payment of full Tithes for Sheep which he has upon his Land at *Candlemas*, he ſhall be exempt for the whole Year from Tithes for Sheep. *R.* 1 *Mod.* 229.

That he pays every 9th Night and 10th Morning all his Milk, from the 10th of *May* till a Lamb bleats in the Pariſh, in lieu of all Tithes of Milk in the Pariſh. *R. Carth.* 461.

So it is not a good *Modus*, if a Man preſcribes to pay one Species of Tithes in Recompence of another Species: As, if he alledge a Preſcription to pay the tenth Cock of Hay, for all the Tithes of his Hay. *R. Cro. El.* 786. * (E. 16.) If he pay one Species of Tithes in Satisfaction for another Species.

* The *Modus* in *Cro. El.* 786. is, the Tenth Sheaf of Corn, the Tenth Cock of Hay, the Tenth Fleece of Wool, the 7th Calf, and the Parſon to pay 1*d.* ½ and the 8th Calf, if he had 8, and the Parſon to pay 1*d.* & *ſic aſque* 10. and if he had under 7 to pay only ½*d.* for every one, and ſo after that Rate for Lambs and Colts, and that it was in Satisfaction for the Tithes of all dry Cattle and for all other Tithes of Corn, Hay, and Cattle. *R.* being only Tithes in Kind, they cannot be in Satisfaction for the Tithes of other Things than themſelves.

Or, a Moiety of the Tithes in ſuch a Cloſe, for all Tithes of Hay there. *Semb. cont. Godb.* 120.

Or, the tenth Sheaf of Corn, for all Tithes of his Corn. *Cro. El.* 786. *Mo.* 278. *Sav.* 100.

Or, the 7th Calf, the Parſon paying three halfpence; the 8th, he paying a penny; and a halfpenny for every one under 7, in Recompence for all Tithes of his Cattle. *R. Cro. El.* 786, 139.

Or

Or a Load of Hay, for all Hay upon his Land. *Semb.* 1 *Rol.* 172.

A Penny for every Milch-Cow, and a halfpenny for every other Cow; for Tithes of all Cows, Steers, *&c.* *Mo.* 909, 911. 1 *Rol.* 651. *l.* 11.

Or, for all Cattle or Agiſtments. *R. Mo.* 454. *Cro. El.* 446, 475.

Yet if a Payment be of a Species in Recompence of that Species and another Thing for which no Tithes are payable, it ſeems good: As, to pay the tenth Shock of Corn, for Tithes of all Corn, Graſs, or Headlands, and Raking. 2 *Lev.* 70.

(E. 17.) If it be not a certain Recompence.

So, it is not a good *Modus* if the Payment be uncertain: As, that he ſhall pay a Penny an Acre, or thereabouts, for every Acre of his Arable Land.

That he ſhall pay 4*s.* for every Day that he ploughs for Wheat, and 2*s.* for every Day that he ploughs for Barley.

That he ſhall pay ſo much for every Calf ſold, for Tithes of all barren Cattle: for perhaps he may not have, or may not ſell any. *Cro. El.* 139.

That the Inhabitants of ſuch Meſſuages ſhall pay each 4*d.* to the Vicar, for Recompence of his Tithes there: for perhaps no Body may inhabit in thoſe Houſes. *R. Cro. El.* 139.

That the Owner of a Manor, or any Part of it, pays 4*d.* for Tithes of his Herbage: for if he has but a Foot, he ſhall pay. 1 *Vent.* 3.

That he pays a *Modus* on or about *April*: for he ought to aſcertain the Time of Payment. *Mod. Ca. in L. & Eq.* 375.

(E. 18.) If there does not appear a Remedy for the Modus.

So, if no Remedy appears for the *Modus*: As, if he alledges, that all Occupiers of Lands within ſuch a Vill, pay 2*s.* for all Tithes within the Vill: for no Remedy appears if any will not contribute: otherwiſe, if he ſays, *Quilibet Occupator* ſhall pay for his Tithes. 2 *Keb.* 280.

(E. 19.) If apparently unreaſonable.

So a *Modus* apparently unreaſonable ſhall be void; As, to pay a halfpenny for Tithes of all Willows, *&c.* cut by him in the ſame Pariſh; without ſaying, for Willows cut upon his own Land. *R. Godb.* 60.

To pay the Tenth Lamb of all Lambs in the Pariſh. *Hob.* 329.

To pay Tithe of Milk at the Place where his Cows are milked. *R. Carth.* 461.

(E. 20.) How a Modus ſhall be deſtroyed. Vide Prescription, (G.)—Ante, (E. 13.)

So a *Modus* may be loſt by frequent Payment of Tithes *in Specie*.

By Neglect to pay the Conſideration payable as the *Modus*.

So a *Modus* ſhall be deſtroyed, by the Deſtruction of the Thing for which the *Modus* was paid: As, if a *Modus* be of ſo much for 2 Fulling-Mills, and they are converted to a Corn-Mill. 1 *Brownl.* 32.

Or a *Modus* be for a Pair of Stones in ſuch a Mill, and another Pair be added. 1 *Brownl.* 32. *R.* 4 *Mod.* 45.

If a *Modus* be for a Mill on ſuch a Stream, and the Owner diverts the Current, and afterwards erects a new Mill upon a new Stream. 1 *Rol.* 652. *l.* 17.

If a *Modus* be for Hay in 40 Acres, and the Owner converts them to Tillage; it ſhall be ſuſpended during the Tillage. *Godb.* 194. *Vide* 1 *Rol.* 651. *l.* 35.

Or, to Hops. *Vide* 1 *Rol.* 651. *l.* 35.

If a *Modus* be to pay a Buck or Doe for Tithes of ſuch a Park, which is afterwards diſparked. *Cro. El.* (467.) *Vide Ante*, (E. 13.)

Or, a Buck or Doe out of ſuch a Park for Tithes of Land there.

Or, a Shoulder of every Buck or Doe in the Park. *Vide Cro. El.* (467.)

Or, 10*s.* *per Ann.* for Tithes of Deer and Herbage in the Park.

But a *Modus* ſhall not be deſtroyed by Payment of Tithes *in Specie* for 20 Years. 2 *Inſt.* 653.

### (E. 21.) By a Real Compoſition of a Lay Perſon.

So a Man may be diſcharged from Payment of Tithes by a Real Compoſition: As, if he or his Anceſtor has made an Agreement with the Parſon, by Aſſent of the Patron and Ordinary, to be free from Tithes *in Specie* againſt him and his Succeſſors, upon ſuch a Sum to be paid annually to him and his Succeſſors. *Cod. Ju. Eccl.* 705. *Vide Ante*, (E. 8.)

Or, in Lieu of ſuch Land given to the Parſon and his Succeſſors.

And of ſuch Diſcharge, every one who has the Land ſhall take Benefit. *Jon.* 368, 9.

So every Owner of Land may make Compoſition with the Parſon for Tithes, during the mutual Lives and Occupancy of themſelves. *Vide Poſt*, (L. 2.)

And ſuch Compoſition for a Year, by *Parol*, will be good. 2 *Cro.* 137.

So it may be for ſeveral Years, when made by way of Retainer for his own Tithes. *Semb. cont. Cro. El.* 249. 2 *Cro.* 137. *But Yel. in the ſame Caſe Semb. acc. Yel.* 94.

And if there be a Compoſition by an Owner, for him and his Aſſigns; the Aſſignee ſhall have the Advantage. 2 *Cro.* 668, 9.

But a Real Compoſition ſhall not be good if it be not by Fine, or Deed. *Vide Cro. El.* 188, 249.

If it be not for them and their Heirs and Succeſſors.

So ſince the *St.* 1 *El.* & 13 *El.* 10. there cannot be a Real Compoſition. *Cod. Ju. Eccl.* 706.

So a Compoſition with a Parſon during his Life, is not good againſt himſelf, if it be by *Parol* only. *R.* 2 *Cro.* 137. *Hob.* 176. *Yel.* 94. 2 *Rol.* 63. *l.* 1. *R. Cro. El.* 188, 249.

Nor a Compoſition for ſeveral Years; if it be not by Way of Retainer.

## (F) The ſeveral Kinds of Tithes.

### (F. 1.) Predial.

TITHES are *Predial*, *Perſonal*, or *Mixt*.

*Predial* are Tithes which ariſe from the Land, ſpontaneouſly, or by Manurance: As, Tithes of Corn, Hay, Wood, Herbs, &c. 1 *Rol.* 635. *l.* 10.

So Wine, Flax, and Hemp are predial. 2 *Inſt.* 649. 1 *Rol.* 635. *l.* 17.

So, Hops. 1 *Rol.* 635. *l.* 21.

So, all Fruits; as, Apples, Pears, Maſt, &c. 1 *Rol.* 635. *l.* 22. 2 *Inſt.* 649.

### (F. 2.) Mixt.

*Mixt* are Tithes which ariſe from Cattle and Beaſts receiving their Nouriſhment upon the Land: As, Calves, Lambs, Kids, Pigs, Chickens, &c. 1 *Rol.* 635. *l.* 15, 30.

So, Wool, Milk, Cheeſe, &c. 1 *Rol.* 635. *l.* 30. 2 *Inſt.* 649.

So, Eggs. *Cod. Ju. Eccl.* 691.

## (F. 3.) Perſonal.

(F. 3.) Who ought to pay them.

*Perſonal* are the Tithes or *Decima Pars* of the clear Gain which is raiſed *ex opere perſonali* of a Man, his Charges and Expences according to his Condition and Degree being deducted. 1 *Rol.* 656. *l.* 25. 2 *Inſt.* 621. *Cod. Ju. Eccl.* 699. 2 *Inſt.* 649.

By the *St.* 2 & 3 *Ed.* 6. 13. Every Perſon exerciſing Merchandizes, bargaining and ſelling, Clothing, Handicraft, or other Art or Faculty, being ſuch Perſon, and in ſuch Places as have accuſtomably for 40 Years paſt paid Perſonal Tithes (except Day-Labourers) ſhall pay them Yearly at or before *Eaſter*, *viz.* the Tenth of his clear Gains, his Charges and Expences according to his Eſtate or Degree deducted.

By which it appears that Perſonal Tithes are of the Nature of Oblations; which in ſome Places are due by Cuſtom. *Vide Ante*, (B. 1.)

Tithes for a Fulling, Paper, Iron Mill are Perſonal Tithes. 2 *Inſt.* 621. 1 *Rol.* 656. *l.* 34. *Vide Poſt*, (H. 12.)

So, Tithes paid for taking Fiſh, Pilchards, Herrings, &c. upon the Sea. 1 *Rol.* 656. *l.* 30.

By the *St.* 2 & 3 *Ed.* 6. 13. If any refuſe to pay his Perſonal Tithes, the Ordinary may call him before him, and examine him by all lawful Means (other than his own Oath) concerning the true Payment of them.

(F. 4.) Who are not bound to pay them.

But by the *St.* 2 & 3 *Ed.* 6. 13. Day-Labourers are not obliged to pay Perſonal Tithes. *Vide Ante*, (F. 3.)

Nor Servants for the Plough, for their Wages. 1 *Rol.* 646. *l.* 25.

Nor an Inn-keeper, for Gain by the Sale of Wine, or Beer. *Cod. Ju. Eccl.* 699. 2 *Bul.* 141.

Nor a Perſon, for his Gain by Money put out at Intereſt. 2 *Bul.* 141.

Or, for his Gain by the Sale of a Houſe, &c. *R.* 1 *Rol.* 656. *l. ult.*

Nor, for the clear Gain which a Man makes by the Loan, &c. of any Thing, without his Labour. *Per Dod.* 1 *Rol.* 656. *l.* 44.

So a Man may preſcribe to pay a *Modus* for them. 2 *Inſt.* 657. *Vide Ante*, (E. 10, &c.)

## (G) Great Tithes.

### (G. 1.) What are.

So Tithes are divided into *Great*, or *Small* Tithes.

*Great* Tithes are Tithes of Wood, Corn, or Hay.

So Tithes of other Herbs, which are planted or ſown in large Quantities, ſo that the moſt Part of the Pariſh has them, will be Great Tithes: as, Saffron, Woad, Hemp, Flax, &c. *R. Hut.* 78. *Cro. Car.* 28. *Per Holt act. but* 3 *J. cont.* 3 *Lev.* 365.

### (G. 2.) What not.

But Herbs in Gardens are *Small* Tithes. *Pal.* 222.

So, Wool, Milk, Cheeſe, and the young of Animals. 2 *Inſt.* 649. — Lambs. *Pal.* 220, 222.

So, Wax, Honey, &c. 2 *Inſt.* 649.

So Woad, Saffron, &c. generally are ſmall Tithes. *R. Cro. Car.* 28. *Hut.* 77. *Pal.* 220, 222.

So

So, Flax, Hops, Tobacco, &c. *Hut.* 78. 1 *Rol.* 643. *l.* 22. *R. per* 3 *J.* 3 *Lev.* 365. *Carth.* 264. *Skin.* 356. *Semb.* 1 *Sid.* 443. 4 *Mod.* 184.

Tho' they are ſowed in an open Field in 30 or 40 Acres *ſparſim*. *R. Cro. El.* 467. *Mo.* 909. *R. per* 3 *J. Holt cont.* 3 *Lev.* 365. *R. Ow.* 74. 4 *Mod.* 184.

So a Vicar, endowed *de Altaragio & minutis Decimis*, may be entitled to Tithes of Wood, Hay, &c. if under ſuch Endowment he has taken them Time whereof, &c. *R.* 2 *Bul.* 27.

## (H) Of what Things Tithes are payable.

### (H. 1.) Of Common Right.

TITHES are payable of Common Right of all Things which annually increaſe, either ſpontaneouſly, or by the Induſtry of the Pariſhioner. (H. 1.) Com.

As, of all Corn, *viz.* Wheat, Rye, Millet, Barly, Oats, Peaſe, &c.

Of Vetches, Tares, &c.

Of Woad, Saffron, Hops, Hemp, Flax, &c.

Tho' the Peaſe are gathered when green, for Sale, or Swine. *Vide* 1 *Rol.* 647. *l.* 15.

The Manner of Payment ſhall be ſuch as the Uſage or Cuſtom of the Country allows: As, where it has been uſually paid in the Sheaf or Bundle, it ſhall be a good Manner of ſetting out of Tithes.

By *Can. Ro. Winchelſey.* 1305. *Decimæ de frugibus, non deductis expenſis, integræ & ſine Diminutione, ſolvantur. Vide. Cod. Ju. Eccl.* 692.

But no Tithe ought to be paid for the Rakings of Corn, where it is not diſperſed by Fraud. 2 *Leo.* 28. 1 *Rol.* 379. 1 *Rol.* 645. *l.* 30. *R. Mo.* 278, 910. *Cro. El.* 475, 660, 702. 2 *Inſt.* 652.

Nor, for Peaſe gathered green to be eaten in his Family. 1 *Rol.* 647. *l.* 14.

Nor, for Stubble. 1 *Rol.* 640. *l. ult. Yel.* 86, 7. 2 *Inſt.* 652.

So, by Cuſtom, Tares, Vetches, &c. cut when green, for the Beaſts of the Plough, may be exempted from the Payment of Tithes. *R. Jon.* 357. *R.* 2 *Leo.* 27, 8. *R. Cro. Car.* 393.

So Tithes are due of all Graſs cut for Hay: *De fœnis ubicunque creſcant. Can. Ro. W.* 1305. *Vide Cod. Ju. Eccl.* 692. (H. 2.) Hay.

Tho' it be Clover, or other Graſs of Modern Uſe. *Carth.* 264.

Of every Crop, where 2 or more Crops are taken in one Year.

Of Graſs in an Orchard, &c. tho' Tithes be paid for the Fruit growing there. *Vide* 2 *Inſt.* 652.

Of Hay uſed for Cattle of the Plough, or Dairy. 2 *Cro.* 47.

So, of Fodder for them, taken out of Fens. *R.* 2 *Cro.* 47. *Mo.* 683.

Tho' it be for Cattle which manure his Land. *Mo.* 683.

So, of After-mowth, except where there is a Diſcharge by Preſcription. 1 *Rol.* 640. *l.* 40.

Tithe of Hay may be ſet out in Graſs-Cocks. *R.* 1 *Rol.* 644. *l.* 5. 2 *Mod. Ca.* 117. *

* 2d Part.

But where by Cuſtom or Uſage it has been paid in Hay-Cocks, it ought to be ſo. *Semb.* 1 *Rol.* 172.

And

And if it be ſet out in Graſs-Cocks, the Parſon may come upon the Land to make Hay of it; and a Cuſtom to the contrary would be void. *R. 1 Rol.* 420.

But Tithes ſhall not be paid for Graſs upon Headlands left for turning of the Plough, if it be cut for Hay. *Per 2 J. Lit.* 13. *Lane* 16.

Nor, for Graſs cut upon Balks in Corn-fields. 2 *Inſt.* 652.

Nor, for Stubble of Corn, or Fern. 2 *Inſt.* 652.

Nor, generally, for Aftermowth of Meadow; where a Man preſcribes to be diſcharged, as he may, by Payment of the Tithes of the firſt Mowth. 1 *Rol.* 640. *l.* 40. *R.* 2 *Cro.* 116. *Cod. Ju. Eccl.* 706. *Mo.* 910. *Cro. Car.* 403. *Cro. El.* 660. *Hob.* 250.

Nor, for Paſture, after Tithes paid of the Hay. *R.* 1 *Rol.* 640. *l.* 45. *Cod. Ju. Eccl.* 706. 2 *Inſt.* 652.

Nor, for Graſs cut in a Meadow for Beaſts of the Plough, if it be not made into Hay. 2 *Leo.* 28. 1 *Rol.* 645. *l.* 5.

Nor, for Agiſtment in After-Paſture, after Tithes paid of the Hay. 1 *Rol.* 640. *l.* 52. 641. *l.* 10.

Or, upon the Graſs of Fallows; for the Fallow is for the Increaſe of Tithes of Corn the next Year.

Nor, by Cuſtom, for Graſs of Headlands cut for Beaſts of the Plough. *R. Cro. Car.* 393.

(H. 3.) **Wood. Of what Wood Tithes ſhall be paid.**

So, of Common Right, Tithes ſhall be paid of *Silva cædua*, which is not great Wood or Timber. By *Canon* 16 *Ed.* 3. it was declared, that all Wood was *Silva cædua & decimabilis*; but by *Parl.* 17 *Ed.* 3. & 18 *Ed.* 3. it was agreed, that no Tithes be paid of Wood but where they uſed to be given. By *Parl.* 21 *Ed.* 3. that they be paid only of Underwood. And now, by the *St.* 45 *Ed.* 3. 3. *Conf.* 47 *Ed.* 3. if demanded of great Wood of 20 Years or above, a Prohibition goes. 1 *Rol.* 637, 638, 639. *l.* 35. *Pal.* 38. *Seld. H. of T.* 3 *Vol.* 1200.

And tho' 2 *H.* 4. and 2 *H.* 5. it was deſired, that all Wood of 20 Years or more ſhould not be tithable, it was denied. 1 *Rol.* 639. *l.* 5, 15.

And therefore now, Tithes ſhall be demanded, unleſs it be of great Wood; for if it be of great Wood a Prohibition goes: if of *Silva cædua* generally, a Conſultation goes for the Tithes of *Silva cædua, dum de groſſis Arboribus non agatur*. 1 *Rol.* 640. *l.* 2. *Reg.* 44.

As, of all Underwood under the Age of 20 Years, Tithes ought to be paid.

So, of Underwood cut for Fuel, tho' it be above 20 Years Growth. *R.* 1 *Sid.* 300. 1 *Lev.* 189. *D. Pal.* 38.

And tho' there be great Trees growing *ſparſim* in it. 1 *Sid.* 300.

Or, a ſmall Quantity of Oak, *&c.* be mixed in the Faggots of the Underwood. *R.* 2 *Leo.* 79.

Tho' uſed in his Houſe in the ſame Pariſh. 1 *Sid.* 447.

So, of Oak, Aſh, Elm, or any other Trees cut under the Age of 20 Years, Tithes ought to be paid. *R. Cro. El.* 1. *Per* 2 *J. cont. Cro. El.* 55.

So, of Willow, Hazel, Holly, Maple, Birch, Alder, Thorn, *&c.* in a Country where they are not uſed for Timber (as generally they are not) Tithes ought to be paid; tho' they be above the Age of 20 Years, and of whatever Age or Bigneſs. 1 *Rol.* 640. *l.* 25. *R.* 2 *Cro.* 199. *Mo.* 907. *Cro. El.* 1. 1 *Brownl.* 94. *Hob.* 219.

So of Beech, Hornbeam, *&c.* in a Country where they are not uſed for Timber. 1 *Rol.* 640. *l.* 24.

Tho' growing in the Defence of the Houſe, and the cutting them is Waſt. *Hob.* 219. 1 *Rol.* 640. *l.* 32.

Tho' cut for Fuel or Fences, unleſs where exempted by Cuſtom. *R. Cro. Car.* 113.

Or are conſumed in the Houſe of a Farmer, by which Means the Parſon has *uberiores Decimas.* 1 *Vent.* 75.

So, of Broom, Furze, *&c.* *Cod. Ju. Eccl.* 708, 710. *Godb.* 44.

So, of a Nurſery of young Trees for tranſplanting. *R. Jon.* 416. *R. Hard.* 380. *R.* 1 *Rol.* 637. *l.* 20. *Cro. Car.* 526.

So Tithes are paid of Acorns, *&c.* of Timber: for they increaſe annually. 11 *Co.* 49. 1 *Rol.* 640. *l.* 37. *Cod. Ju. Eccl.* 706. *Cont.* where they were not gathered and ſold, but eaten by the Swine. *Hetl.* 27. (*Vide Lit.* 40.) *Acc. Mo.* 762.

(H. 4.) Of what, not.

But ſince *St.* 45 *Ed.* 3. 3. No Tithes ought to be paid of great Trees of the Age of 20, 30, or 40 Years: and if they are demanded of ſuch Trees, a Prohibition goes.

As, of Oak, Aſh, Elm, of above 20 Years Growth: for they are Timber throughout the whole Kingdom.

So, of Beech, Maple, *&c.* or other Trees in a Country where they are uſed for Timber. 1 *Rol.* 640. *l.* 30. *Mo.* 541. *Noy* 30. 2 *Rol.* 83.

Tho' Oaks, *&c.* of above 20 Years are decayed, and only fit for Fuel. *Mo.* 541. *R. Cro. El.* 477.

So, if Oaks, *&c.* are topped within the Age of 20 Years, and afterwards the Lops are ſuffered to grow above 20 Years, no Tithes are demandable of theſe Lops: for they are Timber. 1 *Rol.* 640. *l.* 7. *R.* 2 *Leo.* 79.

So, if Oaks, *&c.* of above 20 Years be topped or lopped uſually within 20 Years, no Tithes are due for the Tops and Lops. *R.* 11 *Co.* 48. *b.* 1 *Rol.* 640. *l.* 15. *Semb.* 2 *Cro.* 100. *R. Cro. El.* 477, 8. *Mo.* 908, 762. *Godb.* 175.

Nor, for Trunks of Oaks, *&c.* after 20 Years; tho' become rotten. 1 *Rol.* 640. *l.* 10. 11 *Co.* 49. *a.* 81. *a.*

Nor, for the Germins of ſuch Timber-trees, which grow *de radicibus & ſtipitibus*, after the Tree is cut down. 1 *Rol.* 640. *l.* 20. 11 *Co.* 48. *b.*

Nor, for the Bark of ſuch Trees; for it is privileged in Reſpect of the Tree. 1 *Rol.* 640. *l.* 35. 11 *Co.* 49. *a.*

Nor, for a ſmall Quantity of Underwood, put in Faggots with the Lops of Oaks, *&c.* *R.* 2 *Leo.* 79. *Cro. El.* 347.

Nor, for Roots, or Stubs of Trees, or Underwood cut, for which Tithes were paid; if they be rooted up before new Germins grow. *R.* 1 *Rol.* 637. *l.* 35. *Mar.* 58, 64.

Nor, for the Wood of Fruit-trees, cut the ſame Year in which Tithe was paid for the Fruit. 2 *Inſt.* 621.

Nor, for Wood uſed for Fences. *R. Mo.* 917. 1 *Rol.* 644. *l.* 40. 2 *Inſt.* 652.

Nor, for Wood for burning of Bricks for repairing the Houſe of the Pariſhioner. *Cod. Ju. Eccl.* 708. 1 *Rol.* 645. *l.* 10.

Nor, for Dotards, uſed for Fuel. *R. Mo.* 908.

Nor, for Wood for Neceſſaries in the Houſe, and for Fences, by which the Parſon has *uberiores Decimas.* 1 *Sid.* 447.

Nor, for Broom, Furze, *&c.* uſed for Firing in the Houſe of the Pariſhioner. *R. Cro. El.* 609. *Mo.* 909. 1 *Rol.* 644. *l.* 43.

Tithes of Underwood ſhall be paid by him who cuts it.

So Tithes of a Nurſery of Plants ſhall be paid by him who pulls them up. *R. Hard.* 380.

(H. 5.) Agiſtment of Cattle.

So, of Common Right, Tithes ſhall be paid for the Herbage, or Agiſtment of barren Cattle, which yield no Profit to the Parſon. *Ca. Parl.* 192. *R. Sal.* 655. *R. Hard.* 184. *Cro. El.* 446. 475, 6.

The Canon *A°.* 1305 ſays, *quod de Paſturis & Paſcuis tam communibus quam non communibus Decimæ perſolvantur ſecundum numerum Animalium & Dierum. Vide Cod. Ju. Eccl.* 693.

And Tithes ſhall be paid for the Paſture of all Cattle not profitable to the Parſon. *Cod. Ju. Eccl.* 706.

As, if a Pariſhioner buys Cattle, which he depaſtures for Sale. *R. Cro. El.* 475, 6. 1 *Rol.* 647. *l.* 5.

Tho' they be Beaſts of the Plough, or for Milking; if the Owner does not uſe them for ſuch Uſe, but paſtures them for Sale. *Cod. Ju. Eccl.* 707.

So, if he buys Oxen, Steers, or Horſes, and ſells them when fatted. 1 *Rol.* 647. *l.* 17, 22, 29.

Or, rears young Cattle, and ſells them. 1 *Rol.* 647. *l.* 25.

So, if he uſes them for the Plough or Pail covinouſly, and only for a Colour.

So Beaſts of the Plough, which are diſuſed for the Plough and fatted for Sale, ought to pay Tithes for the Time after they are diſuſed. *R. Ca. Parl.* 193.

So, if an Innkeeper depaſtures the Horſes of his Gueſts. *R. Hard.* 35.

Or any Perſon depaſtures for Hire. *R. Cro. El.* 476.

Or Sheep are fed upon Turnips for Sale after Shearing; tho' Tithes of the Wool were paid. *R. Ca. Eq.* 231, 2.

So, if a Man of another Pariſh holds Land in the Pariſh of *B.* and there depaſtures Cows, Horſes, or other Cattle for Plough and Pail, but does not uſe them in the Pariſh of *B.* *R.* 5 *Mod.* 96. *R. Hard.* 184.

So, if he uſes Part in Part, he ſhall pay Tithes for the Reſidue. 5 *Mod.* 97.

So, if a Man agiſts Cattle Part profitable and Part unprofitable; he ſhall pay Tithes for Herbage of thoſe which are unprofitable. *Cod. Ju. Eccl.* 707. *Popb.* 197.

Or, Part with Cattle for the Plough, and Part with the Cattle of a Stranger. 2 *Rol.* 191.

If the Owner of the Soil agiſts the Cattle, he pays the Tithes. *Jon.* 254. 1 *Rol.* 656. *l.* 15.

If he lets the Herbage, the Leſſee ſhall pay: for it ought to be paid by the Occupier. *R. Hard.* 35.

If all the Herbage be taken by the Cattle agiſted, the Tithe ought to be paid by the Owner of the Cattle: for he is the Occupier. *R. Hard.* 184.

The Sum paid for Agiſtment ſhall be according to the Uſage of the Place.

Sometimes the tenth Part of the yearly Value of the Land. *Hard.* 35, 184.

Many Times the twentieth Part.

Or the tenth Part of the Sum received for the Agiſtment. *Cod. Ju. Eccl.* 707.

But no Tithes are payable for the Agiſtment, or Herbage of Cattle, which are profitable to the Parſon; As, for Sheep for Sale: for they pay Tithes of their Wool. 1 *Rol.* 647. *l.* 20.

So, for Oxen, Steers, Horſes, *&c.* uſed for the Plough in the ſame Pariſh: for the Parſon has the Profit of their Labour in his Tithes of the Corn. *R. Hard.* 184. 1 *Rol.* 646. *l.* 30, 45. *Win.* 33. 2 *Inſt.* 651. *Vide Cro. Car.* 237.

Nor

Nor, for Cows, Sheep, &c. uſed for the Pail in the ſame Pariſh: for the Parſon has Tithes of their Milk, &c. *R. Hard.* 184. 1 *Rol.* 646. *l.* 30. *Vide Cro. Car.* 237.

Nor, for Cattle fatted for the Victuals of the Family of the Owner in the ſame Pariſh. 1 *Rol.* 647. *l.* 10. *R. Cro. Car.* 237.

Nor, for Horſes for the riding of the Pariſhioner himſelf. *R.* 1 *Bul.* 171. *Adm. Popb.* 126.

So no Tithes are due for Agiſtment of Beaſts *Feræ Naturæ*, as, Deer, Conies, &c. without ſpecial Cuſtom. *Vide Poſt*, (H. 14, 16.)

Nor, for the Skins of the Cattle. 1 *Rol.* 646. *l.* 7.

Nor, for young Cattle reared for the Plough, or for the Pail. 1 *Rol.* 646. *l.* 35, 40. *Mo.* 910. 2 *Inſt.* 651.

So no Tithes are due for Agiſtment when Tithes are paid for Hay of the ſame Land in the ſame Year. *R. Yel.* 86.

So, of Common Right, Tithes are payable of the Young of Animals. (H. 16.) The Young of Cattle.

As, of Colts, Kids;

Of Calves, Lambs, Pigs, &c.

The Manner of Payment by the Common Law is generally conformable to the Canon. *Semb. Cro. Car.* 403.

By a *Provincial Canon A°.* 1305, *Pro ſex Agnis & infra, ſex Oboli dentur pro Decimâ; ſi ſeptem ſint Agni, ſeptimus detur pro Decimâ Rectori, qui tres Obolos ſolvat Parochiano. Si Rector octavum recipit, det Denarium; ſi Nonum, det Obolum, aut expectet ad alium Annum, ſi maluerit; & tunc habeat ſecundum aut tertium Agnum de Agnis ſecundi Anni. Vide Cod. Ju. Eccl.* 692. But this Part which allows the waiting for his Tithes to another Year, is not agreeable to the Common Law, which requires an annual Payment of Tithes.

By another *Canon, incerti temporis, Agni, Vituli, Pulli, Equini, & alii fœtus decimales, decimentur habitatione ad loca ubi nutriuntur & oriuntur.*

And the ſame Manner uſually prevails for Tithes of Calves, Kids, Pigs, &c. which the Canon *ſupra* preſcribes for Lambs.

If the Number be leſs than the Canon mentions, the tenth Part of the Value is uſually paid, unleſs where Cuſtom otherwiſe determines.

The Time of Payment is when the Young is weaned, and can live without the Dam; unleſs where Cuſtom preſcribes a certain Time or Age.

But, by Cuſtom, a Man may be exempted for the Young of Cattle nurſed for the Pail or Plough. *R. Cro. El.* 702. *Mo.* 910.

Payment of Tithes for the Young of Animals ought to be by each Owner ſeverally.

Tho' the Sheep of ſeveral are depaſtured together in one Flock.

So Tithes ought to be paid of the annual Product of Animals; as, of Wool, Milk, Cheeſe, &c. (H. 7.) Wool.

And it ſhall be of the Wool, tho' the Sheep die of the Rot, or other Diſeaſe.

Tho' the Owner kills or ſells his Sheep. *Vide* 1 *Rol.* 646. *l.* 8.

Payment of Tithes of Wool ſhall be where the Sheep are ſhorn, generally, and at the Time of the Shearing.

But a Cuſtom to pay at *Lammas* is good. *Mo.* 910. *Cro. El.* 702.

But by *Canon* 1305, *Si oves alibi in Æſtate & alibi in Hieme nutriuntur, dividenda eſt Decima. Vide Cod. Ju. Eccl.* 692.

And *Decima Lanæ* ſhall be paid, as well as *de Agnis, ubi ſunt ſex vel ſeptem Agni, &c.*

So, if Sheep be ſold a little Time before Shearing, into another Pariſh; each Parſon ſhall have his Proportion of the Tithes. *Per Williams, Lane* 16.

So, if Wool be taken from Sheep killed, Tithes ſhall be paid for it. 1 *Rol.* 646. *l.* 7.

So, if cut from the Necks to prevent Flies, *&c.* without more. *R.* 3 *Bul.* 242.

But no Tithes ſhall be paid for Wool to the Parſon of a Pariſh, where the Sheep were not 30 Days.

So where Tithes are paid of the Fleece, nothing ſhall be paid for the Locks and Belts. *Vide* 1 *Rol.* 646. *l.* 5.

Nor, for Wool ſhorn from the Neck about *Mich*ᵃˡ. to prevent the Sheeps being caught in the Briars. 1 *Rol.* 645. *l.* 45, 50.

Nor, for the Birling of Sheep, without Fraud. 1 *Rol.* 645. *l.* 50.

(H. 8) Milk.

By the *Canon* 1305, *De Lacte Decima ſolvetur in Caſeo tempore ſuo, & in Lacte in Autumno & Hieme; niſi Parochiani velint Redemptionem facere ad valorem Decimæ. Cod. Ju. Eccl.* 692.

But, by Cuſtom, ſometimes it ſhall be paid *in Specie* throughout the whole Year.

Sometimes Cheeſe only ſhall be paid in lieu of Tithes of Milk. *Adm. Gulb.* 329. *R. Cro. El.* 609. *Mo.* 909.

So a Cuſtom to pay the 10th Cheeſe made between the 1 *May* and 1 *Auguſt*, in lieu of all Tithe of Milk, is good. *R. Cro. El.* 609. *Mo.* 909.

Or, to deliver the 10th Quart of Milk at the Parſon's Houſe. *Per Popb. Cro. El.* 609.

If no Cuſtom interferes, the Milk ſhall be paid to the Parſon in Kind. *Adm.* 2 *Brownl.* 31.

And it is ſufficient to deliver it, where the Tithe ariſes, without carrying it to the Church, or the Parſon's Houſe. *Cont. Ray.* 278. *Carth.* 462.—*Cont.* where paid in Cheeſe. *Semb. Ley* 70. (*Vide Pal.* 341, 381. 2 *Rol.* 328.)—*Per Raymond*, it ſhall be delivered at the Parſon's Houſe; *Per* 3 *other Barons, at the Church Porch; and ſo decreed. Ray.* 278.

So, by a *Canon, incerti Temporis, Decima Lactis & Caſei de Vaccis & Capris ubi cubant & paſcunt ſolvatur. Vide Cod. Jur. Eccl.* 693.

*Si cubant in unâ Parochiâ, & paſcunt in aliâ, inter Rectores dividatur. Vide Cod. Ju. Eccl.* 693.

But where Milk is paid in Kind, there ſhall be no Tithe of the Cheeſe.

Or, for the Time that Tithes are paid of the Cheeſe, there ſhall be none of the Milk. *Vide* 1 *Rol.* 651. *l.* 20. *Cro. El.* 609.

Milk, where Cuſtom does not alter it, ſhall be paid at every 10th Meal; not the 10th Part of every Meal. *R. Ray.* 277.

But a Cuſtom to pay the 10th Meal for ſuch a Time, in lieu of all Tithe of Milk, is not good. *Cro. El.* 609.

Or a Meal of the 9th Day at Evening, and the 10th Day in the Morning, till an Ewe has a Lamb that bleats. *R. Sal.* 656. *Carth.* 461.

(H. 9.) The Young of Fowls.

So Tithes ought to be paid of the Young, or of the Eggs of all tame and domeſtick Fowls: As, of Geeſe, Ducks, Swans, Turkeys, Hens, *&c. Cont.* of Turkeys. *Mo.* 599. *But Acc.* as to Turkeys, *per Barons. M.* 5 *Geo.* 2.

So, of young Pigeons in Dove-Cotes, or Holes, which are for Sale. *R.* 1 *Rol.* 635. *l.* 42. 644. *l.* 50.

So, of Honey and Wax of Bees in the Hive. *R.* 1 *Rol.* 635. *l.* 40. *Cro. Car.* 559. *Jon.* 447. *Semb.* ſo by Cuſtom. *F. N. B.* 51. *G. Cod. Ju. Eccl.* 707.

Of

Of Geeſe, Ducks, Swans, the Tithes are uſually paid in the Young, if Cuſtom does not otherwiſe determine.

Of Turkeys, and Hens, in the Eggs.

But no Tithes are paid of the Young where the Eggs are paid; nor *è contra*. 1 *Rol.* 642. *l.* 7.

So no Tithes are paid of Animals, or Fowls, which are *Feræ Naturæ*, without a ſpecial Cuſtom. *Vide Poſt*, (H. 14, 16.)

Nor, of the Young or Eggs of Pheaſants, or other Fowls, which are kept near the Houſe by the clipping of their Wings: for they are not reclaimed. *R.* 1 *Rol.* 636. *l.* 10. *Mo.* 599.

Nor, of Pigeons in a Dove-cote, uſed for the Family, without a Cuſtom. *R.* 1 *Rol.* 642. *l.* 43. 644. *l.* 45, 52.

Nor of Bees, where a Cuſtom is alledged, that by Tithes of the Wax and Honey, and the Charge of Hives, and maintaining them in Winter, he ought to be diſcharged. *Cro. Car.* 403, 4. 1 *Rol.* 651. *l.* 5.

So, by ſome, without ſuch Allegation: for they are *Feræ Naturæ*. 1 *Rol.* 651. *l.* 5.

(H. 10.) Fruits, Seeds, Roots, *&c.* When they ſhall be paid, and how.

So, of Common Right, Tithes are payable of all Fruits and Plants which renew yearly: As, of Apples, Pears, Plumbs, and other Fruits in Orchards, or Gardens. *Vide* 2 *Inſt.* 652.

By the *Canon Rob. Winchelſey* 1305, *Decimæ ſolvantur de fructibus Arborum, Seminibus omnibus, & Herbis Hortorum, niſi Parochiani competentem Redemptionem fecerint pro talibus Decimis. Vide Cod. Ju. Eccl.* 692.

So, of Crabs, Maſt, *&c.*

So, of all Seeds of Hemp, Flax, Herbs, *&c.* if Tithes were not paid of the Hemp, Flax, *&c.* itſelf.

So, of Acorns if they are gathered and ſold. *Het.* 27. *Cod. Ju. Eccl.* ſays, of *Acorns*, generally, 706. So 11 *Co.* 49. *a.*

So, of all Roots; as Turnips, Carrots, Parſnips, *&c.*

So, for Peaſe, Beans, *&c.* for Sale, or the Feeding of Hogs. 1 *Rol.* 647. *l.* 15.

So, of all Herbs.

And Tithes of Fruits, Roots, and Herbs, ought to be paid when they are gathered; or ſome Rate for them.

Tho' the Owner permits another to gather them. *Cod. Ju. Eccl.* 707.

(H. 11.) When not.

But Tithes ſhall not be paid of Seed, when it was paid of the Herbs or Plants themſelves; nor *è contra*.

Nor, for Acorns which fall from the Oak, and are gathered and eaten by Hogs. *Het.* 27.

So Tithe ſhall not be paid for Fruit ſtolen: for it is not due till it be gathered by the Owner, or with his Conſent. *Cod. Ju. Eccl.* 707.

(H. 12.) Mills.

So, for a Mill, antient or new, ſome Tithes are due. 2 *Inſt.* 621.

And by *Art. Cleri.* 9 *Ed.* 2. 5. Where a Prohibition for Tithes of a new Mill was prayed to be allowed, it was denied; and decreed, that ſuch Prohibition never ſhould be granted.

And this Act entends to all Mills, publick or private, as a Fulling, Paper, Iron-Mill, *&c.* as well as a Corn-mill. 2 *Inſt.* 621.

By the *Canon Rob. Winchelſy, Arch. Cant. Ao.* 1305, *De Proventibus Molendorum Decimæ fideliter & integre ſolvantur, viz. Decimæ Granorum molitorum ad Molendinarium pertinentium, tanquam Fructuum prædialium, Expenſis non deductis. Lind.* 195. *Vide Cod. Ju. Eccl.* 692, 3.

So, where by Uſage the 10th Toll-diſh has been paid, it ſhall be good, tho' it be a Predial Tithe, and not a Perſonal. 2 *Inſt.* 621.

And the 10th Toll-diſh ſeems the proper Payment of Tithes of a Corn-mill. *Cont.* 2 *Inſt.* 621. *Acc.* 1 *Rol.* 656. *l.* 35. 2 *Rol.* 84. *Per Holt*, *Sho.* 281.

So, by Preſcription, a *Modus* may be paid for an antient Mill. *Sho.* 281. 4 *Mod.* 45.

But Tithes for a Fulling, Paper, Iron-Mill, *&c.* are properly a Perſonal Tithe: for no Tithes in Kind are due. 2 *Inſt.* 621. 1 *Rol.* 641. *l.* 15. 656. *l.* 34. 1 *Rol.* 405. *Semb.* 2 *Rol.* 84. 2 *Cro.* 523. *Cont. Semb.* 1 *Rol.* 641. *l.* 20. *Vide Ante*, (F. 3.)

So, for a Copper-mill. *Lit.* 314.

So, for a Tin-mill, Lead-mill, *&c.* 2 *Rol.* 84.

So, for a Glaſs-houſe, *&c.* *Lit.* 314.

And if but a Perſonal Tithe, then where no Tithes are uſed to be paid, none are due. *Vide St.* 2 *&* 3 *Ed.* 6. 13. 2 *Rol.* 84. 1 *Rol.* 405. 3 *Bul.* 212.

So an antient Griſt-mill may be diſcharged from Payment of Tithes, by Preſcription.

So, if a Mill is erected *de novo* upon Land diſcharged of Tithes by Payment of a *Modus*; the Mill ſhall not pay Tithes, but the antient *Modus*. *R.* 1 *Rol.* 651. *l.* 30. 2 *Inſt.* 490.

So, if a *Modus* be for 2 Mills, and the Water-Courſe being diverted by the Act of God, one Mill is removed to the Water-Courſe; no Tithes, but the antient *Modus*, ſhall be paid. *R.* 1 *Rol.* 652. *l.* 10.

Yet if a Mill be erected *de novo* upon Land diſcharged by the *St.* 31 *H.* 8. 13. it ſhall pay Tithes. *R.* 2 *Cro.* 429.

So, if a *Modus* be for a Houſe and Mill, and another Mill is newly erected within the Houſe; it ſhall pay Tithes: for it is not merely a Predial, but in Part a Perſonal Tithe. *Semb.* 1 *Rol.* 652. *l.* 25.

So, if a *Modus* be for 2 Mills, and the Stream is diverted by the Act of the Party, and one Mill is removed to it; it ſhall pay Tithe. *R.* 1 *Rol.* 652. *l.* 20.

So, if Tithe is payable at the Mill, it ſhall not be paid for Corn, for which Tithe was paid the ſame Year to the ſame Parſon. 2 *Inſt.* 652.

(H. 13.) Tithes for Hemp, Flax, *&c.* aſcertained.

So, by *St.* 3 *& W. & M.* 3. *revived by* 11 *&* 12 *W.* 3. 16. *and continued for* 7 *Years*, Every Acre of Land not diſcharged by *Modus*, and ſown with Hemp or Flax, ſhall pay 5*s.* and no more for Tithes, and ſo proportionably, *&c.*—[*Continued by other Acts, and made perpetual by* 1 *Geo. ſt.* 2. *c.* 26.]

## (H. 14.) Of What Things Tithes are not payable, of Common Right.

But no Tithes are payable, of Common Right, for a Houſe of Habitation: for Tithes are paid for Things annually renewing by the Act of God. 11 *Co.* 16. *a.* 1 *Rol.* 636. *l.* 40. *Hob.* 11. *Vide Cro. El.* 276.

Nor, for Rent reſerved upon a Houſe or Land. 11 *Co.* 16. *a.* 1 *Rol.* 636. *l.* 43.

Nor, for Profit made by Sale of a Houſe. *R.* 1 *Rol.* 656. *l.* 55.

So, of Common Right, Tithes are not payable for Things Parcel of the Freehold: As, for Quarries of Stone, *&c.* 1 *Rol.* 637. *l.* 5. *R. Cro. El.* 277. *Mo.* 908. 2 *Inſt.* 651. *Seld.* 3 *Vol.* 1201. 2 *Leo.* 79.

Or,

Or, for Coal. 1 *Rol.* 637. *l.* 7. 2 *Leo.* 79. 2 *Inſt.* 651.
Or, Tin. 1 *Rol.* 637. *l.* 12. 2 *Inſt.* 651.
Or, for Lime, or Chalk. *R.* 1 *Rol.* 637. *l.* 17. *Het.* 14. 2 *Inſt.* 651.
Or, for Lead, Copper, or other Oar. 2 *Ver.* 46. *Het.* 14. 2 *Inſt.* 651.
Or, for Gravel, or Clay.
Or, for Brick, or Tile, *&c.* *R.* 2 *Mod.* 77. 2 *Inſt.* 651.
Or, for Turf uſed for Fire. *R.* 1 *Rol.* 637. *l.* 10. 2 *Inſt.* 651.
Or, for Flags, Marle, Chalk. 2 *Inſt.* 651.

So no Tithes are due, of Common Right, of Things which are *Feræ Naturæ:* As, of Deer in a Park. 2 *Rol.* 458. 2 *Inſt.* 651.

Nor, of Conies. *R.* 1 *Rol.* 635. *l.* 45. *Per* 2 *J. Lit.* 13. *Hard.* 188. *Semb.* 2 *Rol.* 458.

Nor, for Fiſh taken in the High Sea: for there is only a Perſonal Tithe due, *deductis Expenſis.* *R.* 1 *Rol.* 636. *l.* 20. *Cro. Car.* 264. *Vide Poſt,* (H. 16.)

Nor, for Fiſh taken in a common River. *R.* 1 *Rol.* 636. *l.* 5, 25. *Cro. Car.* 339. *R. Het.* 13.

Nor, for Doves or Pigeons. 2 *Mod.* 77.—*Per Cur. Cont.* 2 *Rol.* 2. 1 *Rol.* 635. *l.* 42. but this ſeems intended by Cuſtom, for they are not due of Common Right, where conſumed in the Houſe of the Owner. *Per Cur.* 1 *Rol.* 642. *l.* 43. 644. *l.* 45. *R. Lit.* 311. *Het.* 27, 147.

Tho' the Owner has no Dove-cote, but Pigeon-holes faſtned to his Houſe. 1 *Rol.* 644. *l.* 52.

Yet if the Owner ſells his young Pigeons, Tithes are due. 1 *Rol.* 644. *l.* 50. *Per Henden, Lit.* 311. *Het.* 147. *Vide Ante,* (H. 9.)

So Tithes are not paid of Dogs, Cats, *&c.* 12 *H.* 8. 4. *b.*

## (H. 15.) What are exempted for 7 Years.

So by *St.* 2 & 3 *Ed.* 6. 13. All barren Heath or Waſte-Ground (not otherwiſe diſcharged) which paid no Tithe by reaſon of its Barrenneſs, if improved, ſhall pay Tithes after 7 Years after its Improvement.

And therefore, ſuch barren and ſteril Lands are exempted from Tithes for 7 Years. 2 *Inſt.* 655, 656.

So, *by the ſame Stat.* if they paid any Tithes, till 7 Years after Improvement they ſhall pay no other Tithe than before.

And if it be barren as to Tillage, and be afterwards improved for Tillage; it ſhall be exempted for 7 Years, tho' it paid Tithes of Lambs and Wool before. 2 *Inſt.* 655, 656. *Cont. Het.* 147.

So, Heath, or Land which only produces a Flower in *Autumn* upon which the Cattle and Sheep brouſe, or Flags, or Turf for Fuel. 2 *Inſt.* 656.

But the Lands excuſed are ſuch as are barren in their Nature, and not by bad Huſbandry. *R. Mo.* 909. *Cro. El.* 475. *Vide* 2 *Inſt.* 656.

And therefore, Fenny-Land ſhall not be excuſed, tho' it be drained. *Mo.* 439. 3 *Bul.* 166.

Nor, Wood-Lands grubbed, and afterwards ſown with Corn, or Graſs. *Bend.* 80. 2 *Inſt.* 656.

Nor, Land overgrown with Thorns and Buſhes, tho' it be cleared by Induſtry. *R. Cro. El.* 475. 2 *Inſt.* 656.

Nor, a Salt-marſh; tho' by a great Charge, encloſed or recovered from the Sea. *R.* 3 *Bul.* 166.

Nor, a Marſh ſurrounded, for want of cleanſing the Sewers or Ditches, or by Accident, or Inundation, when afterwards recovered. 2 *Inſt.* 656.

So

So Lands, encloſed with Hedge and Ditch, are not exempted, as Waſt, or Heath. *Bend.* 80.

## H. 16.) Of what Things Tithes are due by Cuſtom.

Yet, by Cuſtom or Preſcription, Tithes may be due for Rent of Houſes in an antient City or Borough. *R.* 11 *Co.* 16. *a.* *Q.* 1 *Rol.* 642. *l.* 30. *Adm.* by a *Proviſo* in the *St.* 2 & 3 *Ed.* 6. 13. *S.* 12.

But this does not extend to a Houſe newly erected. 1 *Rol.* 642. *l.* 35.

So, by Cuſtom, Tithes may be due for Things which are Parcel of the Freehold; As, for a Limekiln. 1 *Rol.* 642. *l.* 50. *Het.* 14.

For Salt. 1 *Rol.* 642. *l.* 52.

For Iron-Oar, or Lead-Oar. *Het.* 13, 14.

So, by Cuſtom, they may be due for Things *Feræ Naturæ*: As, for Fiſh taken in a River, or the Sea. *Semb.* 1 *Rol.* 636. *l.* 20. *R. Cro. Car.* 264. *Cro. Car.* 339. *Adm. by the St.* 2 & 3 *Ed.* 6. 13. *S.* 11. *Pal.* 527. *Het.* 13.

For Conies. 1 *Rol.* 635. *l.* 50. *Lit.* 13. *Hard.* 188. 1 *Vent.* 5. *Het.* 13.

So, for Doves or Pigeons. 1 *Rol.* 642. *l.* 43. 644. *l.* 34. 1 *Vent.* 5.

And where Tithes are not due by the Common Law, but only by Preſcription, the Pariſhioner may preſcribe to pay the 20th Fiſh, *&c.* or other Share, in lieu of the Tithe. 1 *Lev.* 179.

So, for great Trees. 1 *Rol.* 642. *l.* 38.

Or, for Wood cut to be conſumed in the Houſe of the Owner. 1 *Rol.* 642. *l.* 46.

So a Man may preſcribe for Tithes of ſome Things for which no Tithes are due of Common Right: As, by the Cuſtom in *Wales*, for Tithes of Goods given in Marriage: but this is now taken away by the *St.* 2 & 3 *Ed.* 6. 13. 2 *Inſt.* 664.

# (I) The Manner of Payment.

## (I. 1.) They ought to be ſevered from the 9 Parts.

*Vide Ante*, (H. 10, 12, 13.)

HOW Tithes of Corn, Hay, and Wood ſhall be paid, *Vide Ante*, (H. 1, 2, 3, 4.)

How Agiſtment, or Increaſe of Cattle, and Poultry, *Vide Ante*, (H. 5, 6, 7, 8, 9.)

By the *St.* 2 & 3 *Ed.* 6. 13. Every Subject ſhall juſtly, without Guile, ſet out, divide, and pay all Manner of predial Tithes, in ſuch Manner as hath been of Right uſed for 40 Years paſt.

And therefore, if he does not ſever the 10th from the 9 Parts, it is within the Statute.

Or, if he ſevers, and afterwards carries away the Tithes ſevered; for this is a fraudulent Severance. 2 *Inſt.* 649.

Or, grants the Tithes, before Severance, to *A.* and immediately after Severance *A.* carries them away. 2 *Inſt.* 649.

So, by *St.* 2 & 3 *Ed.* 6. 13. At the Tithing of predial Tithes, it ſhall be lawful for any to whom Tithes are due, or his Servant, to ſee his Tithes truly ſet forth, and ſevered from the 9 Parts, and the ſame to take and carry away.

And therefore, a Cuſtom that Tithes ſhall be ſet out *abſque viſu & tactu* of the Parſon, is not good. 2 *Vent.* 49. *R. Hob.* 107.

### (L. 2.) But there needs no Notice of the Severance.

But Notice need not be given when Tithes are ſet out, tho' it is required by the Eccleſiaſtical Law. *R.* 2 *Vent.* 48. *Acc. Carth.* 143. *Per Hutton, Noy* 19.

So, if there be two Impropriators, he need not divide his Tithes into Moieties when they are ſevered. *Lat.* 24, 228.

Yet before an Action on the Caſe is brought for not carrying away his Tithes, Notice of the Severance ſhall be given. *Vide Poſt*, (L. 3.)

## (K) Tithes belong to the Succeſſor from the Death, &c. of the laſt Incumbent.

BY the *St.* 28 *H.* 8. 11. The Tithes, Fruits, Oblations, *&c.* Rents, and all Profits belonging to any Archdeaconry, Parſonage, *&c.* or other Spiritual Promotion, *&c.* ariſing during Vacation, ſhall belong to the Perſon next preſented promoted, inſtituted, *&c.*

And if any Ordinary, or any other, take them and refuſe to render them to the next Incumbent, or hinder his taking, *&c.* he ſhall forfeit treble the Value, *&c.* a Moiety to the King, a Moiety to the next Incumbent, ſave the Charge of the Cure and collecting the Tithes, *&c.*

And therefore, the Tithes belong to the Succeſſor from the Death of the former Incumbent; tho' another officiates for 10 Years before the Succeſſor be inſtituted and inducted. *R. Hard.* 329.

But by the *St.* 28 *H.* 8. 11. the Executor of the former Incumbent ſhall have the Corn of the Glebe ſown by his Teſtator.

If the Teſtator makes a Leaſe, rendring Rent payable at *Lady Day* and *Michaelmas*, and dies after all the Profits of the Year received, but before *Michaelmas*, the next Incumbent ſhall not have a Bill for the Rent due at *Michaelmas*, without making the Executor a Party. 2 *Ver.* 136, 204.

### (L. 1.) When Tithes ſhall not be paid.

BUT by *St.* 2 & 3 *Ed.* 6. 13. No Perſon ſhall be ſued for, or pay any Tithes for any Lands, *&c.* which by the Laws and Statutes of this Realm, or by Privilege or Preſcription are not chargeable, or are diſcharged by Real Compoſition. *Vide Ante*, (E. 1, *&c.*)

### (L. 2.) A Parſon ſhall not have Tithes during a Leaſe, or Compoſition for them.

If a Parſon leaſes his Tithes to another, he cannot afterwards demand Tithes of his Pariſhioner during the Leaſe. *Vide Ante*, (E. 21.)

So, if he leaſes or makes a Compoſition or Agreement with any Pariſhioner for his own Tithes. *R.* 1 *Lev.* 24.

Tho' it be an Agreement by *Parol* for the Life of the Pariſhioner, if the Plaintiff ſo long continues Parſon. *R. per tot. Cur.* 1 *Lev.* 24.

But an Agreement by a Parſon with a Pariſhioner, to take a Compoſition of ſo much as long as he continues Parſon, binds only at Will, if it be by *Parol*. *R. Hard.* 203.

So a Leaſe of Tithes above a Year, ſhall not be good by *Parol.* *Godb.* 354. *Ow.* 103.

Nor any Leaſe to a Stranger, tho' it be but for a Year. *R. Godb.* 374. *Lat.* 176.

So a Covenant by a Parſon, that his Pariſhioner ſhall not pay Tithes, and by the Pariſhioner, to pay ſo much for a Year, ſhall be no Diſcharge of a Suit for Tithes: for it reſts in Covenant. *Popb.* 140. 2 *Leo.* 73.

Yet ſuch a Compoſition by *Parol* excuſes the Pariſhioner from Damages upon the *St.* 2 *Ed.* 6. 13. ſo long as the Pariſhioner has no Notice that the Parſon will determine it. *R. Hard.* 203.

So, if the Parſon ſues in the Eccleſiaſtical Court after ſuch a Compoſition, a Prohibition goes. *Godb.* 333.

So if a Compoſition for ſo much *per Annum* be made *quamdiu placuerit*, the Parſon cannot determine his Compoſition after the Corn ſown. *Per Hale, Sal.* 414. *Hard.* 203.

Neither ſhall he avoid it for the Time paſſed, by Notice to determine it after the Day of Payment incurred. *Hard.* 203.

### (L. 3.) He ought to take them away within a reaſonable Time.

When the Tithes are ſevered from the 9 Parts, the Parſon ought to watch them till he carries them away; not the Owner of the Land, *&c.* *Noy* 31.

If the Parſon does not take away his Tithes within a reaſonable Time, but ſuffers them after Severance to continue upon the Land to the Damage of the Pariſhioner, an Action upon the Caſe lies by him againſt the Parſon. *Pal.* 341, 381. *Noy* 31.

So, if the Parſon will not take his Tithe-Cheeſe after Notice to take it. *Semb. Godb.* 330, 332. *R. per* 3 *J. Pal.* 341, 381. *Noy* 31.

So a Pariſhioner may diſtrain Tithes as *Damage-feaſant*, which continue upon his Land for an unreaſonable Time, to his Damage. *Semb.* 3 *Bul.* 336.

But before an Action upon the Caſe againſt the Parſon, Notice of the Severance ought to be given to him. *

(* *Vide* 2 *Vent.* 48. & 1 *Rol.* 643. *l.* 38. *Qu. if not ſemb. cont.*)

So the Pariſhioner ought to ſhew, how long the Tithes continued upon his Land, after Notice.

So a Tender of the Tithe-Cheeſe ought to be made, before an Action is maintainable for not taking it. *R. per* 2 *J. Pal.* 382.

So, if the Owner takes Tithes ſevered *Damage-feaſant*, he ought to ſhew, that the Tithes continued a long Time upon the Land. *R.* 3 *Bul.* 336.

## (M) Remedy for Tithes.

### (M. 1.) In the Eccleſiaſtical Court.

(M. 1) By Spoliation.

REMEDY for Tithes lies in the Spiritual, or Temporal Court.

The Remedy in the Spiritual Court is either for the Right, or the detaining of Tithes.

In all Caſes, where the Right of Preſentation does not come in Queſtion, a Spoliation may be ſued in the Spiritual Court for the Church itſelf, or for the Profits of the Church, by one Incumbent againſt another. *F. N. B.* 37, 51.

As, if an Incumbent be created Biſhop and holds his Church in *Commendam*, and another be inſtituted and inducted; Spoliation lies by the one againſt the other, for the Tithes and Profits of the Church. *F. N. B.* 36. *H.*

So, if the Incumbent accepts a Plurality, and another is afterwards inſtituted and inducted. *F. N. B.* 36. *H.*

So, if a Biſhop collates to a Prebend, and dies, and the Prebendary is inducted, and then the King collates another, who is inducted; Spoliation lies by one againſt the other: for the Right of Patronage is not in Debate, the King's Clerk not having Title till the other be removed by *Quare Impedit*. *F. N. B.* 36. *K.*

So, if a Clerk has a Church by Proviſion contrary to the *St.* 25 *Ed.* 3. upon which the King preſents one who takes the Profits before Induction: For the King's Preſentee, not being inducted, is a Treſpaſſer. *F. N. B.* 37. *C.*

So, if one Clerk claims the Tithes as Parſon, the other as Vicar to the ſame Church, Spoliation lies.

If one claims as Parſon, the other a Portion of Tithes of the ſame Church due to him by Preſcription. 1 *Leo.* 58, 59.

So, Spoliation lies by a Farmer, *&c.* of a Parſon, againſt another Parſon, or his Farmer.

So, one Clerk may have Spoliation againſt the other, if the Tithes do not amount to the 4th Part of the Value of the Church, tho' claimed by ſeveral Titles; in which Caſe the Right of Patronage may come into Debate. *F. N. B.* 37. *E.*

When Spoliation lies, the Suit cannot be ſtayed by Prohibition, or *Indicavit*. *Vide Prohibition*, (G. 5, &c.)

And if Treſpaſs, or other Action at the Common Law, be ſued for ſuch Tithes, the other Clerk may plead to the Juriſdiction of the Court.

But Spoliation does not lie by one Clerk, againſt another, who claims as Incumbent of another Church.

Or, by the Preſentation of another Patron to the ſame Church. *F. N. B.* 36. *H.*

So, if an Abbot claims as an Appropriation to his Houſe, the other by the Preſentation of a Stranger. *F. N. B.* 37. *B.*

Or, by the Preſentation of the Leſſee of the ſame Abbot. *F. N. B.* 37. *A.*

So Spoliation does not lie againſt a Clerk, who has not a Title by the Eccleſiaſtical Law: As, if he takes the Profits of a Church without Preſentation, Inſtitution, and Induction. *F. N. B.* 36. *H. I.* 37. *C. D.*

So it does not lie, where Tithes are demanded by a Clerk, againſt another claiming by a ſeveral Title, to the Value of the 4th Part of the Church, or above. *Vide F. N. B.* 37. *E.*

(M. 2.) By Libel. In what Caſes a Suit by Libel ſhall be in the Spiritual Court.

Remedy for Subſtraction of Tithes, in the Spiritual Court, began originally by Act of Parliament. 2 *Inſt.* 489. *Vide Prohibition*, (G. 5.)

But it was antiently allowed. 2 *Inſt.* 364. 2 *Rol.* 217. *l.* 5. *Seld. of Tithes, c.* 14.

By the *St. Circumſpecte agatis*, 13 *Ed.* 1. *Si Rector petat verſus Parochianos Oblationes aut Decimas debitas vel conſuetas, vel ſi Rector agat contra Rector' de Decimis, modo non petatur quarta pars valoris Eccleſiæ, habet Judex Eccleſiaſticus cognoſcere.*—And by *Art. Cleri*, 9 *Ed.* 2. 1. no Prohibition ſhall go. 2 *Inſt.* 487, 619.

By the *St.* 1 *R.* 2. 13. ſuch who by Indictment, Impriſonment, *&c.* endeavour to ouſt the Juriſdiction of Spiritual Court in ſuch Suits, *&c.* incur the Penalty againſt falſe Appeals.

By

By the *St.* 27 *H.* 8. 20. and 32 *H.* 8. 7. Every Subject, *&c.* ſhall pay his Tithes according to the Eccleſiaſtical Laws and Cuſtom of the Pariſh; and for Subſtraction, *&c.* any Perſon Eccleſiaſtical, or Lay, may convent the Offender, *&c.* before the Ordinary, *&c.* and compel him to yield his Dues.

By the *St.* 2 *&* 3 *Ed.* 6. 13. If any carry away, *&c.* his predial Tithes before they be ſet out, on Proof before the Spiritual Judge or other Judge, *&c.* he ſhall pay double the Value beſides Coſts, to be recovered before the Eccleſiaſtical Judge, according to the Eccleſiaſtical Laws.

And by the Proviſoes in the *St.* 32 *H.* 8. 7. and 2 *&* 3 *Ed.* 6. 13. If any ſubſtract Tithes, *&c.* he ſhall be ſued in the Eccleſiaſtical Court to the Intent the Eccleſiaſtical Judge may hear and determine the ſame: And it ſhall not be lawful for any to ſue, *&c.* before any other Judge than the Eccleſiaſtical.

But by a Proviſo theſe Statutes do not extend to the Citizens of *London*. *Vide Poſt*, (M. 6, 7.)

And by a Proviſo in the *St.* 2 *&* 3 *Ed.* 6. 13. that Act does not extend to give Juriſdiction to the Eccleſiaſtical Judge to hold Plea againſt the Effect of *W.* 2. 5. *Art. Cleri. Circ. Agatis. Silva cædua*, the Treatiſe *de Regia Prohibitione*, the *St.* 1 *Ed.* 3. 16, or in any Matter where the King's Court ought to have Juriſdiction.

And therefore, in all Caſes of Subſtraction of Tithes due, the Proprietor, Eccleſiaſtical or Lay, may ſue for the ſingle Value in the Eccleſiaſtical Court. 2 *Inſt.* 490. *R.* 3 *Bul.* 271.

And for the double Value, where predial Tithes are detained. *Godb.* 245.

And ſhall recover the Tithes themſelves, as well as the double Value, and his Coſts. *R.* 2 *Inſt.* 612, 651.

A Suit may be in the Spiritual Court, tho' the Tithes are ſevered and afterwards ſubſtracted, *&c.* by the Owner. *Cro. El.* 843, 4.

Tho' the Actor there claims by a Leaſe of the Tithes by *Parol:* for the Defendant ought to ſet forth his Tithes. *R.* 1 *Leo.* 23.

By the *St.* 27 *H.* 8. 20. Every Defendant to a Suit in the Eccleſiaſtical Court may have his lawful Demand, Proſecution, Appeal, Prohibition, or other lawful Defence, or Remedy, according to the Eccleſiaſtical Laws and Statutes of this Realm.

(M. 3.) By what Means Payment ſhall be compelled there.

By the *Canon Ro. Winchelſey* 1305, *Parochiani moneantur* 1°. 2°. 3°. *ut Decimas fideliter ſolvant; & ſi non emendaverint*, 1°. *ab ingreſſu Eccleſiæ ſuſpendantur; & ſic demum ad ſolvendum per Cenſuram Eccleſiaſticam, ſi neceſſe ſit, compellantur. Vide Cod. Ju. Eccl.* 693.

(M. 4.) When it ſhall have the Aid of Juſtices of Peace,

By the *St.* 27 *H.* 8. 20. In Caſe the Ordinary, *&c.* for any Contempt of the Defendant, *&c.* make Information and Requeſt to any of the King's Council, or to Juſtices of Peace where the Offender dwells, to aſſiſt the Ordinary, *&c.* or reform the Defendant in any ſuch Cauſe, ſuch King's Council or 2 Juſtices *(Quorum unus)* ſhall attach ſuch Defendant, and commit him to Ward without Bail, *&c.* till he find Surety before him, or ſome other Councellor, or Juſtice, by Recognizance, *&c.* to the King, to give Obedience to the Proceſs, and Decree of ſuch Eccleſiaſtical Court.

So, by the *St.* 32 *H.* 8. 7. If he refuſe after Sentence, *&c.* 2 Juſtices *(Quorum unus)* on Certificate, or Complaint of the Eccleſiaſtical Judge, may attach and commit to the next Gaol, till he find Surety, *&c.* to perform the Sentence.

And by the *St.* 2 *&* 3 *Ed.* 6. 13. The Eccleſiaſtical Judge, if he obey not the Sentence, *&c.* and no Appeal, or Prohibition be pending, may excommunicate

communicate him, and in Caſe he continues ſo 40 Days after Publication of it in the Pariſh-Church where he dwells, may ſignify it to the *Chancery*, and pray Proceſs of *Excommunicato capiendo*.

By the *St.* 27 *H.* 8. 20. Before Sentence, on Certificate of Contumacy, two Juſtices of Peace may commit, *&c.*—But they cannot proceed upon the *St.* 32 *H.* 8. or 2 & 3 *Ed.* 6. till Sentence is paſſed.

And by theſe Statutes in all Suits for Tithes, Oblations, *&c.* due by Uſage, where only the ſingle Value is demanded, the Ordinary may have the Aid of Juſtices of Peace.

The Juſtices may take Surety by Recognizance, or Obligation to the King.

And upon the *St.* 32 *H.* 8. they ought to take 2 Sureties; but upon the *St.* 27 *H.* 8. one is ſufficient.

But Juſtices of Peace cannot commit, *&c.* except where the Defendant is obſtinate.

Neither can they commit before Sentence, where the Suit is by a Lay Perſon.

If a Commitment be irregularly made, an *Habeas Corpus* lies. *Cart.* 221.

*Vide Juſtices of Peace*, (B. 34.)

## (M. 5.) In the Temporal Courts.

Remedy for Subſtraction of Tithes in the Temporal Courts, may be purſued in the Hundred, or County-Court, before the Mayor of *London*, in the Courts of *Weſtminſter*, or a Court of Equity. (M. 5.) In the Hundred, or County Court.

Antiently a Suit for Tithes was allowed in the County-Court. *Seld. de Dec. c.* 14.

In the Sheriffs Tourn. 2 *Inſt.* 661.

So, in the Hundred Court.

By *St.* 37 *H.* 8. 12. *Sect.* 2, 11. a Decree is confirmed by which it was directed, that the Inhabitants of *London* and Liberties ſhall pay Tithes to the Parſons, Vicars, and Curates of the City according to the Rate of 16*d. ob.* for every 10*s. per Ann.* of all Houſes, Shops, Warehouſes, Cellars, and Stables in the City or Liberties, and 2*s.* 9*d.* for every 20*s.* Rent, *&c.* by quarterly Payments. *Ca. Eq.* 192. *Seld.* 3 *Vol.* 1202. (M. 6.) Before the Mayor of *London*. When Tithes are paid in *London*.

By *S.* 3, 4. If by Fraud leſs Rent be reſerved, and a Fine, *&c.* taken, the Tenant ſhall pay Tithes according to the Rent when laſt let, without Fraud: and if the Owner occupy it himſelf, he ſhall pay according to the Rent when laſt let.

By *S.* 6. If a Leſſee make an Under-leaſe of Part; each ſhall pay according to his Rent.

By *S.* 13. If he lets it in Parcels under 10*s. per Ann.* the Owner, if he dwells in Part of it, or elſe the principal Leſſee ſhall pay after the Rate the Houſe let at; and the Tenants of ſuch ſmall Parcels ſhall be diſcharged, paying 2*d.* a Piece for Offerings.

So Tithes ſhall be paid for a Houſe according to the Rent upon the former Demiſe, tho' no Rent be reſerved, nor Fine paid. 2 *Inſt.* 660.

Tho' the Rent be reſerved for half a Year, and afterwards for another half Year.

Tho' the Houſe was before diſcharged by the *St.* 31 *H.* 8. or otherwiſe. *R. Cro. El.* 276. *Mo.* 912.

But, *by the ſame Decree*, *S.* 14. no Tithes ſhall be paid for Gardens of Pleaſure, not let out to Profit.

Nor, by *S.* 16. Noblemens or Great Mens Houſes while unlet, if they did not formerly pay Tithes.

Nor, by *S.* 16. for Halls of Crafts or Companies, not uſing to pay Tithes, while unlet.

Nor, by *S.* 17. for Sheds, Stables, Cellars, Timber-yards, or Tenter-yards, never belonging to a Dwelling-Houſe, and not uſing to pay Tithes.

And, *by the ſame Decree*, *S.* 18. where leſs than 2*s.* 9*d.* for every 20*s.* hath been accuſtomed, the Inhabitants ſhall pay only the Rate accuſtomed. —Tho' the leſſer Sum was paid by uſual Agreement, or Aſſent, and not by Preſcription. *R. per* 3 *Barons*, 12 *Geo.* 1. *Ca. Eq.* 193.

Or, by *S.* 21. if a Tenement be let at leſs by Reaſon of its Ruins, the Tithes ſhall be only at the Rate it is let at.

And by *S.* 12. an Houſholder paying 10*s.* *per Ann.* or more, ſhall pay nothing for Offerings; but his Wife, Children, Servants, *&c.* ſhall pay 2*d.* Yearly.

So by Conſtruction upon this Statute and Decree, if the Rent be reſerved which was paid at the Time of the Decree; it ſhall not be a Fraud if the Leſſee by Covenant be bound to pay more annually as a Fine. 2 *Inſt.* 659.

So Tithes ſhall not be paid for an Houſe, which never was demiſed, but occupied by the Owner: for it is *Caſus omiſſus.* 2 *Inſt.* 660.

So an Impropriator cannot ſue for Tithes upon this Decree: for he is not within the Statute, which names the Parſon, Vicar, and Curate only. *Hard.* 102.

Nor, a Sequeſtrator by Ordinance of Parliament. *Dub. Hard.* 102. *Cro. Car.* 596.

(M. 7.) How recovered.

By *St.* 37 *H.* 8. 12. *S.* 19. (which confirms the Decree for Tithes in *London*) it is enacted, that if Variance ariſe in the City for Non-payment of Tithes, or upon the Knowledge of the Rent or Tithes, *&c.* on Complaint by the Party grieved to the Mayor, he ſhall, by Advice of Council, call the Parties, and make a final End, with Coſts, *&c.*

But by the ſaid *St.* 37 *H.* 8. 12. *S.* 20. If the Mayor end not the Suit in 2 Months after Complaint to him, or if any Party is aggrieved by him, the Chancellor, on Complaint, ſhall in 3 Months make an End, with Coſts, *&c.*

And therefore, there can be no Suit for Tithes in *London*, purſuant to this Act, in the Eccleſiaſtical Court: for another Remedy is expreſly appointed. 2 *Inſt.* 660.

And if a Suit be for Tithes purſuant to this Decree, in the Eccleſiaſtical Court, a Prohibition ſhall go. *Dub. Cro. Car.* 596. *Acc.* 2 *Inſt.* 660.

Yet there may be a Suit for Tithes in *London*, by Bill in the *Exchequer*. *Vide Poſt*, (M. 13, &c.)

(M. 8.) In the Courts of *Weſtminſter*. By *Scire facias*, and *Mandamus*.

Remedy for Tithes in the Courts of *Weſtminſter* was by *Scire facias*, *Mandamus*, Prohibition, *Indicavit*, Right of Advowſon, or Action.

By the Common Law, a Commiſſion iſſued out of *Chancery* to inquire by an Inqueſt, whether ſuch a Spiritual Perſon had a Right to the Tithes of ſuch Land; and if the Inquiſition returned that he had, and afterwards another religious Body, or Eccleſiaſtical Perſon took the ſame Tithes after Severance, a *Scire facias* lay upon this Return, to ſhew Cauſe why he took them, and the Defendant pleaded to it, *&c.* *Seld. de Dec.* 435. 2 *Inſt.* 640.

So a *Scire facias* lay by a Patentee upon a Grant to him of Tithes by the King. 2 *Inſt.* 640. *Seld. de Dec.* 441.

And upon a Fine Executory of Tithes. 2 *Inſt.* 640. *Seld. de Dec.* 439.

But

But a *Scire facias* lay only againſt the Perſon of the Tithes after Severance; not againſt the Owner of the Land for his Subſtraction. 2 *Inſt.* 640.

So by the *St.* 18 *Ed.* 3. 7. (which tho' it be in the Form of a Patent, is a Statute, 2 *Inſt.* 639.) ſuch Writs ſhall not be granted from henceforth, ſaving to the King his Right, *&c.*

And therefore, after this Statute a *Scire facias* does not lie, except in the Caſe of the King and his Patentee. 2 *Inſt.* 640.

Tho' the Parties admit the Juriſdiction of the Court. 2 *Inſt.* 641.

So where the King had granted Tithes to a Church out of his Land, *&c.* a *Mandamus* antiently uſed to be directed to the Sheriff, that he ſhould permit the Parſon, *&c.* to enjoy them. *Seld. de Dec.* 445.

And ſometimes ſuch *Mandamus* ſeems to be granted, where Tithes belonged to a Church out of other Lands than thoſe of the King. *Seld. de Dec.* 447.

But ſuch Writs have been diſcontinued many Years.

So the Party ſhall have Remedy for Tithes upon a Prohibition in *B. R.* and *C. B.* the *Exchequer*, or *Chancery*, where the Suit for them is out of the Juriſdiction of the Eccleſiaſtical Court. *Vide Prohibition*, (A. 2.—B.—G. 5, *&c.*) (M. 9.) By Prohibition.

As, if a Suit be in the Spiritual Court for Tithes of Things for which no Tithes are payable by Law, a Prohibition lies.

Of what Things no Tithes are due, *Vide Ante*, (H. 14, 15, 16.)

So by *St.* 1 *R.* 2. 13. If Parſons, *&c.* ſue in the Spiritual Courts for Tithes, *&c.* and the Judges be indicted, or by forced Obligations, *&c.* be compelled to deſiſt, *&c.* ſuch Obligations ſhall be null, and the Procurers of ſuch Indictments ſhall incur the Pain of the *St. W.* 2. 12. againſt ſuch as procure falſe Appeals.

As to Remedy for Tithes by Right of Advowſon, *Vide Quare Impedit*, (B. 1, 2.) (M. 10.) By Right of Advowſon, and Deforc.

If a Suit be in the Spiritual Court, by a Spiritual Perſon, or his Patron, for Tithes, againſt another Spiritual Perſon, he or his Patron ſhall have a Writ of *Indicavit* (which is in the Nature of a Prohibition) after Libel, and before Sentence. *Cod. Ju. Eccl.* 721. *F. N. B.* 30. *E. G. Seld. de Dec. c.* 14. *S.* 3.

Or, after Sentence, if there be an Appeal from the Sentence. 12 *Ed.* 4. 13, 14.

And it lies, by the Common Law, where the Suit was in the Spiritual Court for Tithes of any Value. *Seld. de Dec. c.* 14. *S.* 3.

So where a Clerk was impleaded for the Advowſon itſelf, or the Vicaridge, Prebend, or Chapel, as well as where he was ſued in the Spiritual Court for Tithes of an Advowſon, Vicaridge, Prebend, or Chapel. *F. N. B.* 45. *B.* 30. *I.*

So it lies, where a Suit is for Oblations, as well as for the Advowſon, or Tithes. *F. N. B.* 45. *D.*

So it lies by the King where his Clerk is ſued, as well as by a Common Perſon. *F. N. B.* 45. *B.*

And commonly it is between 4 Perſons, *viz.* by one Clerk and his Patron, againſt another and his Patron. *F. N. B.* 45. *B.*

If the Church be appropriate to an Abbot, it may be between 3; *viz.* the Abbot who is Parſon and Patron, and the Patron and Parſon of the other Church: but there the Abbot repreſents 2 Perſons. *R.* 12 *Ed.* 4. 13. *b.*

This Writ is in the Nature of a Prohibition. *Vide F. N. B.* 30. *E.* 45. *B.*

And

And may be directed to the Judge, as well as to the Party. *F. N. B.* 30. *E.* 45. *B.*

And the Plaintiff who ſues an *Indicavit*, ought to ſhew a Copy of the Libel in *Chancery*. *F. N. B.* 30. *G.* 45. *C.* 12 *Ed.* 4. 13. *b.*

But by the *St. de Circumſpecte agatis*, 13 *Ed.* 1. and by *Art. Cleri*, 9 *Ed.* 2. 2. If a Parſon demands Oblations, or Tithes due, or accuſtomed, or a Parſon ſues another for Tithes, ſo that the 4th Part of the Value of the Benefice be not demanded, the Spiritual Judge ſhall have Conuſance, the King's Prohibition notwithſtanding.

And therefore, in the Caſe of a Common Perſon, a Writ of *Indicavit* does not lie if the Tithes do not amount to a 4th Part of the Value of the Church. 2 *Inſt.* 364. 12 *Ed.* 4. 13. *b.*

So, by the *St. W.* 2. 13 *Ed.* 1. 5. The Patron of the Parſon diſturbed by *Indicavit*, ſhall have a Writ to demand the Advowſon of the Tithes in Demand, and when it is deraigned, the Plea ſhall paſs in the Court Chriſtian.

And therefore, tho' the Right of Tithes before this Statute could not be tried between the Parſons after an *Indicavit*; now the Patron of the Parſon prohibited may have a Writ of Right of Advowſon, and if he recovers, the Plea ſhall be remanded to the Court Chriſtian. *Cod. Ju. Eccl.* 721. 2 *Inſt.* 364.

(M. 11.) By Aſſum. By Aſſum upon the St. 2 & 3 *Ed.* 6. for the treble Value. *Vide Poſt.* (M. 18.)

So by the *St.* 2 & 3 *Ed.* 6. 13. No Perſon ſhall carry away Predial Tithes before he hath juſtly ſet forth the Tithes, or agreed for the ſame with the Parſon, *&c.* or Farmer, under Pain of the treble Value of the Tithes carried away.

Upon this Statute Debt lies at Common Law for the treble Value, againſt him, who carries away his Tithes without Severance from the 9 Parts, or a Compoſition for them. 2 *Inſt.* 650. *Vide Dett*, (A. 1.)—*Pleader*, (2 S. 14, &c.)

And it lies by an Impropriator or his Leſſee, tho' Lay, as well as by an Eccleſiaſtical Perſon. *Vide* 2 *Inſt.* 650.

But an Action does not lie for the treble Value for any other than Predial Tithes. 1 *Brownl.* 31. 2 *Inſt.* 649.

So an Information does not lie by the King: for where the treble Value is given as a Recompence to the Owner, an Information does not lie for the King. 2 *Inſt.* 650.

(M. 12.) By Treſpaſs.

So where Tithes are ſevered from the 9 Parts, and afterwards a Lay-Perſon takes them away, Treſpaſs lies. 50 *Ed.* 3. 20. *b.*

By the *St. Art. Cl.* 9 *Ed.* 2. 1. If a Clerk, *&c.* ſells his Tithes, and afterwards demands the Money before a Spiritual Judge, a Prohibition lies: for, by the Sale, the Tithes are made Chattels.

So, if a Pariſhioner ſets forth his Tithes, and a Stranger takes them, and a Libel be againſt him for it in the Spiritual Court, a Prohibition lies. *Mo.* 912.

But by the *St.* 1 *R.* 2. 14. If a Spiritual Perſon be drawn in Plea in the Secular Court, for his Tithes taken, by Name of Goods taken, and he alledge the Suit is for Tithes due to his Church; the general Averment ſhall not be taken, without ſhewing ſpecially how the ſame was his Lay-Chattel. *Cod. Ju. Eccl.* 724, 5.

(M. 13.) In a Court of Equity. In the *Exchequer.*

So, upon a Bill in the *Exchequer* by a Parſon againſt his Pariſhioner for Diſcovery and Subſtraction of Tithes, the Court decrees the ſingle Value, with Coſts and Payment *in futuro*.

And this did not begin in the Time of War; but was uſed *ab antiquo*. *Hard.* 5, 116. *Sav.* 63. 38 *Aſſ. pl.* 20.

And therefore, where the Plaintiff demands the ſingle Value only, and makes Proof of the Quantity and Value, the Tithes ſhall be decreed. *R. Hard.* 4, 5.

So a Bill in the *Exchequer*, may be for Tithes in *London* upon the Decree 37 *H.* 8. tho' by the *St.* 37 *H.* 8. 12. Remedy is given before the Mayor. *R. Hard.* 116.

And, as the King himſelf may ſue without Queſtion, ſo his Patentee may: for he has the ſame Perſonal Privilege. *Hard.* 116.

So a Suit may be by Bill in the *Exchequer* between an Impropriator and Vicar, for Tithes, where the King is Patron. *Lane* 100. 1 *Rol.* 538. *l.* 45. *Vide Courts*, (D. 2.)

So a Bill may be for a Diſcovery only, without praying Relief, (in order to ſue for the treble Value at Common Law) tho' he does not offer to take the ſingle Value only. *Semb. upon Demurrer*, *Hard.* 190.

(M. 14.) The Bill, when ſufficient.

A Bill in the *Exchequer* ought to ſhew, how, or by what Title the Plaintiff demands Tithes. *Vide Hard.* 130, 321.

But if a Vicar demands Tithes, without ſaying how intitled, by Preſcription or Endowment, it is well, where the Defendant by his Anſwer admits him to be Vicar, and does not controvert his Right, but inſiſts upon a Satisfaction given. *R. Hard.* 130. *Vide Chancery*, (3 C.)

So, if the Plaintiff ſhews, that he is Vicar, and intitled generally. *R. Hard.* 321. tho' it is there ſaid, that ſuch Bill has been held inſufficient upon Demurrer.

So it is ſufficient, if the Plaintiff ſhews, that he is Rector, and intitled to the Tithes in the Pariſh, without more.

But if the Plaintiff by his Bill demands the treble Value, his Bill ſhall be diſmiſſed. *R.* 3 *Lev.* 204.

So, if he does not make Proof of the Quantities and Values of the Tithes, where the Defendant inſiſts upon an Extinguiſhment by Unity of Poſſeſſion: for no Damage to the Plaintiff appears. *R. Hard.* 4.

(M. 15.) The Plea.

The Defendant, upon a Bill for Tithes, may plead Non-Reſidence, *&c.* without ſhewing Quantities and Values. *R. Ca. Eq.* 228. (*Vide Comyns's Rep.* 392, 3.)

Or a *Modus*, if he ſhews Quantities and Values. *Ca. Eq.* 228.

But the Statute of Limitations is no Plea. *Ca. Eq.* 229.

(M. 16.) The Anſwer.

The Defendant by his Anſwer ought to anſwer all the material Parts of the Bill.

If he inſiſts by his Anſwer (and not by Plea) upon a Diſcharge by a *Modus*, he ought to anſwer to Quantities and Values; and an Examination upon Interrogatories if the *Modus* be proved, does not excuſe from a full Anſwer. *R. Hard.* 130. (*Vide Comyns's Rep.* 392.)

So, if he inſiſts upon a *Modus*, by Plea: for the Plea does not go to the Right of the Plaintiff, but to avoid the Account by the Defendant. *Semb. Cont. Hard.* 130.

Yet it is ſufficient by Anſwer to ſay, that the Lands belonged to ſuch an Abbey, *&c.* which was of ſuch an Order, and therefore by *St.* 31 *H.* 8. ought to be diſcharged, without more Certainty. *R. Hard.* 322.

So, if a Demand be of Tithes by Cuſtom of Things, for which none are due *de jure*, he need not anſwer to Quantities or Values, if he denies the

Cuſtom: for it is ſufficient that he be examined upon Interrogatories when the Cuſtom is tried. *R. Hard.* 188.

(M. 17.) In Chancery. So by Bill in *Chancery*. *Vide Chancery*, (3 C.)

(M. 18.) The Remedy upon a Diſſeiſin of Tithes. By *St.* 32 *H.* 8. 7. If any having an Inheritance, Freehold, Term, or Intereſt in a Parſonage, Vicaridge, Portion, Tithes, *&c.* or other Eccleſiaſtical Profit, which be or ſhall be made Temporal, or in Temporal Hands, be diſſeiſed, *&c.* he may have Remedy in the Temporal Courts by *Præcipe quod reddat*, Aſſize, *Mort d'anceſtor*, *Quod ei deforceat*, Dower, or other Writ Original, *&c.* in like Manner as of other Lands or Tenements.

By the *St.* 27 *H.* 8. 28. 31 *H.* 8. 13. 37 *H.* 8. 4. and 1 *&* 2 *Ed.* 6. 14. for the Diſſolution of Houſes of Religion, and this Act of 32 *H.* 8. 7. and the *St.* 1 *&* 2 *Ph. & M.* 8. Tithes and other Eccleſiaſtical Duties, which come to the King are Temporal Inheritances, and have all the Incidents of other Inheritances. *Co. L.* 159. *a.* *Vide Advowſon*, (E.)

And therefore, ſhall be Aſſets in the Hands of an Heir, or Executor. *Co. L.* 159. *a.*

A Wife ſhall have Dower of them. *Co. L.* 159. *a.*

And a Huſband be Tenant by the Curteſy. *Co. L.* 159. *a.*

So the ſame Actions and Remedy ſhall be allowed for them as for other Eſtates.

An Ejectment lies of Tithes. *Cro. Car.* 301. *R. Jon.* 322.

So Tithes or a Rectory impropriate, being Lay-fee, cannot be ſequeſtered in the Spiritual Court, for not repairing the Chancel, *&c.* *Semb.* 2 *Vent.* 35.

## (N) Aſſurance of Tithes.

BY the *St.* 32 *H.* 8. 7. Writs of Covenant, and all other Writs for Fines, and all other Aſſurances ſhall be deviſed and granted in *Chancery* of Parſonages, Vicaridges, Tithes, *&c.* as are uſed of other Lands; and ſhall be of like Force.

# DISPENSATION.

*Vide Condition*, (P.)—*Copyhold*, (M. 8.)—*Forfeiture*, (A. 11, 12.)—*Prærogative*, (D. 4, &c. 18, &c.)

# DISPOSITION.

## Diſpoſition by a Wife.

*Vide Baron and Feme*, (P. 1, 3.)—*Chancery*, (2 M. 14, 15.)

# DISSEISIN.

*Vide Abatement*, (H. 47.)—*Diſmes*, (M. 18.)—*Garranty*, (I. 1.)—*Rent*, (D. 2.)—*Seiſin*, (F. 1, &c.)

## Novel Diſſeiſin.

*Vide Aſſiſe*, (B. 1, &c.)

## Re-diſſeiſin, and Poſt-diſſeiſin.

*Vide Aſſiſe*, (F. 1, &c.)

# DISSOLUTION.

## Diſſolution of a Corporation.

*Vide Franchiſes*, (G. 4, &c.)

## ——— of Hoſpitals.

*Vide Hoſpital*, (B.—C.)

## ——— of Monaſteries.

*Vide Diſmes*, (C. 5.—E. 7.)—*Monaſtery*.

## ——— of Marriage.

*Vide Parliament*, (H. 3.)

## ——— of Parliament.

*Vide Parliament*, (P. 1, 2.)

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# DISTRESS.

## (A) Diſtreſs.

Kinds of diſtreſs
1. By common right.
2. Againſt common right by cuſtom.
3. By expreſs covenant

### (A. 1.) When it may be taken.

FOR all Services a Diſtreſs may be made of Common Right. *Doct. & St. l. 2. c. 9. Co. L. 150. b.*

As, for Rent-Service. 45 *Ed.* 3. 15. *b.* 1 *Rol.* 665. *l.* 37. *Co. L.* 142. *a.*

So, for Heriot-Service. 1 *Rol.* 665. *l.* 47. *Vide Copybold*, (K. 21.)

So, for Suit-Service; as, Suit to a Hundred-Court, or Court-Baron. 1 *Rol.* 665. *l.* 40. *Vide Copybold*, (K. 17.)

So,

So, for a Fine aſſeſſed in a Court, a Diſtreſs is due of Common Right. 1 *Rol.* 666. *l.* 4. *R.* 8 *Co.* 41. *b.*

So, for an Amerciament in a Court-Leet, for an Offence in or out of Court. *D. Kel.* 66. *b.* 1 *Rol.* 665. *F. R.* 8 *Co.* 41. *Sav.* 94. *R. cont.* that there ought to be a Cuſtom alledged for diſtraining, 1 *Sal.* 175. *R. Acc.* 9 *H.* 7. 21. *b. D.* that in the Caſe of a Common Perſon there ought to be a Cuſtom alledged; otherwiſe in a Leet of the King, *Cro. El.* 748. *Vide Leet*, (O. 10.)

So a Diſtreſs might be for Aid *pur faire Fitz Chivaler, ou File marrier.* 1 *Rol.* 665. *l.* 42.

So, for a Relief the Lord himſelf may diſtrain. 1 *Rol.* 665. *l.* 45.

Or, *pro Valore Maritagii. D. Cro. Car.* 533.

So, for Treſpaſs with Cattle, a Diſtreſs may be of the Cattle *Damage-feaſant.*

And a Bailiff, by his Office, may diſtrain without a ſpecial Warrant. *Dub. Cro. El.* 698. *Vide Cro. El.* 748.

But for a Thing due againſt Common Right, a Diſtreſs cannot be made without a Preſcription: As, *pro Certo Letæ*, he ought to preſcribe to diſtrain for it, as well as to have it. *R.* 11 *Co.* 44. *b.*

So, for an Amerciament in a Court-Baron. *D.* 11 *Co.* 45. *a. Doct. & St. l.* 2. *c.* 9. 1 *Rol.* 666. *l.* 6.

So, for Toll in a Fair. 1 *Rol.* 666. *l.* 10, 15. *Hob.* 187.

So, for a Tax chargeable by Cuſtom in a Vill, *&c.* for the Repair of a Bridge. 1 *Rol.* 666. *l.* 20.

So, for *Land-cheap*, or the like cuſtomary Payment within a Vill, *&c.*

So, for the Profits of a Court-Baron reſerved to the Lord upon the Grant of a Manor. *R. Mo.* 870.

So, for a Fine granted *pro Licentia concordandi. Semb.* 1 *Leo.* 249.

So, for the Cattle of the Lord where the Tenants have the ſole Paſture. *Semb.* 2 *Cro.* 208.

So, for a Fine aſſeſſed in a Leet by Cuſtom for refuſing to be ſworn Conſtable. *R. Skin.* 636.

So, for a Relief upon an Alienation, where due only by Cuſtom, and not by Tenure, or Reſervation. *Jon.* 133.

So, for Debt, Account, or Contract, *&c.* a Diſtreſs cannot be taken. *Doct. & St. l.* 2. *c.* 9.

Nor, for Waſt, Reparation, *&c. Doct. & St. l.* 2. *c.* 9.

So, for a Service wholly uncertain, a Diſtreſs cannot be taken; as, for Service in *Frankalmoigne. Co. L.* 96. *a.*

So, a Man cannot take 2 Diſtreſſes for the ſame Rent: for it was his Folly that he did not take ſufficient at firſt. *R. Mo.* 7. *Cro. El.* 13. *R. Lat.* 1536.

Tho' he alledges that the firſt Diſtreſs was but of ſuch a Value, and that it was not ſufficient. *Dub. Cro. El.* 13. *Q. Lut.* 1536.

But, for Rent due at ſeveral Days, he may take ſeveral Diſtreſſes, tho' the Whole was due at firſt. *Mo.* 7.

## (A. 2.) At what Time.

A Diſtreſs for *Damage-feaſant* may be in the Night: otherwiſe the Cattle may eſcape. *Co. L.* 142. *a. Vide Doct. & St. l.* 2. *c.* 9.

But for a Rent-Service or a Rent-Charge a Diſtreſs cannot be in the Night. *Co. L.* 142. *a.*

A Diſtreſs for Rent cannot be made upon the Day in which the Rent is payable: for it cannot be due till the laſt Moment of the Day. *Doct. & St. l.* 2 *c.* 9. *Co. L.* 47. *b.*

So

So it cannot be after the Term ended. 1 *Rol.* 672. *l.* 15. *Doct. & St. l.* 2. *c.* 9. *Co. L.* 47. *b.*

Tho' the Leſſee continues in Poſſeſſion by Sufferance, or by Wrong, after his Leaſe expired: For he is not in in Privity of the Leaſe. *Cont. Kel.* 96. *a. R. acc.* 1 *Rol.* 672. *l.* 20.

So a Diſtreſs cannot be for Rent after his Eſtate is determined: As, if a Man ſeiſed of a Rent-Charge, or Rent-Service, in Fee, or for Life, grants over his Eſtate, he cannot diſtrain for Arrears due before his Grant. 4 *Co.* 50. *b, Ognel.* 1 *Rol.* 672. *l.* 30. *Co. L.* 162. *b. Vide Dett*, (B.)

So, if a Grantee of a Rent for Years if he ſo long live, dies, his Executor or Adminiſtrator cannot diſtrain for the Arrears by the Common Law, nor by the *St.* 32 *H.* 8. 37. *Cro. Car.* 471.

So, if a Man ſeiſed in Fee, Tail, or for Life, of a Rent, or Fee-farm, dies, his Executor or Heir cannot diſtrain by Common Law for the Arrears incurred in his Life-time. *Co. L.* 162.

Nor, ſince *St.* 32 *H.* 8. for Relief, Aides, or Corporal Service. *Co. L.* 162. *b.*

Nor, for a *Nomine Pœnæ. Co. L.* 162. *b.*

Yet if a Leſſee for 20 Years leaſes for 10 Years, and dies, his Executor or Adminiſtrator may diſtrain for Arrears incurred in his Life-time: for the Executor repreſents his Teſtator, and has the Reverſion and Rent annexed, in the ſame Plight as his Teſtator had it. *R.* 1 *Rol.* 672. *l.* 35.

So, if a Leaſe be *de Anno in Annum quamdiu, &c.* and after a ſubſequent Year commenced the Leſſee dies; the Leſſor may diſtrain upon the Executor, or Adminiſtrator: for the Leaſe continues till the End of the Year. *R. Sal.* 414. (*Vide Lut.* 214.)

And now, by the *St.* 32 *H.* 8. 37. An Executor or Adminiſtrator of any ſeiſed of Rent-ſervice, Charge, or Seck, or of Fee-farm in Fee, Tail, or for Life, may have Debt, or diſtrain for Arrears due in the Life of the Teſtator, or Inteſtate.

And an Huſband ſeiſed in Right of his Wife, may do ſo for Arrears incurred in her Life, before or after Coverture. *Sect.* 3.

So may Tenant *pur auter Vie*, his Executors and Adminiſtrators, for Arrears incurred during the Life of *Ceſtuy que vie. Sect.* 4.

And all Rents in Money, or in Corn, Cattle, Pepper, *&c.* are within the Statute. *Co. L.* 162. *b.*

So a Diſtreſs may be upon the Land ſo long as it is in Poſſeſſion of him that ought to pay, or any claiming by, from, or under him. *R.* 4 *Co.* 50.

So by the *St.* 8 *Ann.* 14. A Leſſor may diſtrain in 6 Calendar Months after a Leaſe for Life, for Years, or at Will is determined: So as the Leſſor's Title or Intereſt, and the Poſſeſſion of the Tenant from whom the Rent became due be continuing.

## (A. 3.) In what Place.

A Man may diſtrain for a Rent-ſervice in any Part of the Land holden.

So, for a Rent charged, or reſerved upon a Leaſe upon any Part of the Land out of which the Rent iſſues.

And if a Houſe be upon the Land demiſed or charged, a Diſtreſs may be in the Houſe, when the Houſe is open.

So a Diſtreſs may be in a Houſe thro' the Doors or Windows. 1 *Rol.* 671. *l.* 7, 17.

If the Land lies in two Counties, a Diſtreſs may be for the whole Rent in either County. 1 *Rol.* 671. *l.* 30.

So, if it be in the Hands of many Tenants, it may be for the Whole in the Land of any Tenant. 1 *Rol.* 671. *l.* 35.

So if Cattle are driven to avoid the Diſtreſs when the Lord, *&c.* is in View, they may be purſued freſhly, and taken in Land out of his Fee, or the Land holden. 1 *Rol.* 671. *l.* 40. *Co. L.* 161. *a.*

So, by the *St.* 8 *Ann.* 14. If a Leſſee clandeſtinely carry off Goods from the demiſed Premiſſes to prevent a Diſtreſs, the Leſſor, or any impowered by him, may in 5 Days after carrying off, take ſuch Goods, where-ever found, for the Rent arrear, and ſell or diſpoſe the ſame, as if diſtrained on the Premiſſes: Provided, the Leſſor may not ſeiſe as a Diſtreſs Goods ſold *bonâ fide*, and for a valuable Conſideration, before ſuch Seiſure made. *

So the King may diſtrain for a Rent-ſervice in all the Lands of his Tenant held of him, or of others. 1 *Rol.* 670. *l.* 15. 2 *Inſt.* 131.

And if the Leſſee makes an Under-Leaſe after the Arrears incurred, the King may diſtrain in all the Lands of the Under-tenant for the Arrears. *R.* 1 *Rol.* 670. *l.* 25. 2 *Rol.* 159. *l.* 45.

So, by *St.* 22 *Car.* 2. 6. a Purchaſer of a Fee-farm Rent ſhall have the ſame Remedy as the King might have, by Diſtreſs, upon all the Lands of the Terre-tenant. 2 *Ver.* 714.

Yet the King cannot diſtrain in Lands of his Tenant, which are not in his actual Poſſeſſion and manured with his own Cattle: As, in Lands of the Tenant, demiſed for Life, for Years, or at Will. 2 *Inſt.* 132. 2 *Ver.* 714.

So, if a Demiſe be of a Manor, *&c.* to which an Advowſon belongs, a Diſtreſs for Rent cannot be in the Glebe of the Advowſon. 1 *Rol.* 671. *l.* 22, 25.

So a Man may diſtrain for an Amerciament in the Sheriff's Turn, in any Lands of the Party within the County: for it is Perſonal. 1 *Rol.* 670. *l.* 30.

And for an Amerciament in a Hundred, or Leet, within the whole Hundred, or Leet. 1 *Rol.* 670. *l.* 35, 40.

Yet a Diſtreſs cannot be for an Amerciament in a Leet, *&c.* upon Land in the King's Poſſeſſion within the Precinct of the Leet: for during the King's Poſſeſſion it is out of the Juriſdiction. 1 *Rol.* 670. *l.* 50.

But by the *St. of Marlb.* 52 *H.* 3. 15. *Nulli liceat ex quâcunque cauſâ Diſtrictionem facere extra Feodum ſuum, niſi Domino Regi & Miniſtris ſuis, &c.*

And this was but an Affirmance of the Common Law. 2 *Inſt.* 131.

Wherefore none can diſtrain out of the Lands holden, or out of thoſe from which the Rent iſſues. 1 *Rol.* 671. *l.* 10, 12.

And tho' Cattle eſcape out of the Fee when they are in View, the Lord cannot diſtrain them. 2 *Inſt.* 131. *Co. L.* 161. *a.*

Or, if they be driven out for any lawful Cauſe, except for avoiding the Diſtreſs. 1 *Rol.* 671. *l.* 45. *Co. L.* 161.

So, if they be driven by the Tenant before the View of the Lord, tho' it be for avoiding the Diſtreſs. *Co. L.* 161. *a.*

So, if Cattle *Damage-feaſant* are driven out of the Land after View, they cannot be diſtrained. *Co. L.* 161. *a.*

If a Man diſtrains out of his Fee, Treſpaſs lies. 2 *Inſt.* 131.

Or, an Action upon the *St. of Marlb.* 2 *Inſt.* 131.

So by the *St. of Marlb.* 15. None can diſtrain in *viâ Regiâ* or *communi Stratâ*.

Tho' it be within his Fee.

If a Man diſtrains in the Highway, an Action lies upon the *St.* of *Marlb.* 2 *Inſt.* 131.

But a Man ſhall not avoid the Diſtreſs, in *Replevin*: for, it is not void. 2 *Inſt.* 131.

But the King may diſtrain in the Highway.

* [By the *St.* 11 *Geo.* 2. 19. within 30 Days.—And the Leſſor may break open an Houſe to ſeiſe them in the Day-time.—And may diſtrain Stock or Cattle and Crops growing on the Premiſſes. *Vide* this Statute.]

So

So aiſtreſs D for an Amerciament may be in the Highway. 2 *Rol.* 670. *l.* 44.

So, for Toll-thorough, *&c.*

So, for a Rent-Charge, if it be Parcel of the Thing out of which the Rent iſſues: for the *St. of Marlb.* extends only to a Diſtreſs for Rents and Services. 2 *Inſt.* 131. *R. Cro. El.* 710.

## (B) What Things may be diſtrained.

### (B. 1.) For Rent-Service.

GENERALLY, all moveable Goods, and Chattels of the Leſſee may be diſtrained, for Rent due, if they are found upon the Land demiſed.

So moveable Goods and Chattels of the Tenant, for Services due to his Lord.

And of the Terre-tenant, for a Rent-Charge.

So Cattle of a Stranger which are put, or eſcape into the Land out of which the Rent iſſues, may be diſtrained for ſuch Rent. 11 *H.* 7. 4. *a.* 15 *H.* 7. 17. *b.* *R.* 2 *Sand.* 289. 1 *Rol.* 668. *l.* 5, *ad* 30. 671. *O.* *Vide infra.*

Tho' they never were *levant* and *couchant* upon the Land. 15 *H.* 7. 17. *b.* *R.* 2 *Sand.* 289. *Co. L.* 47. *b.*

Tho' the Eſcape was for Default of the Fences of the ſame Land. *R.* 2 *Sand.* 289. *R. Pal.* 43. 2 *Rol.* 124.

And tho' the Fences ought to be repaired by the Leſſor himſelf, or his Tenant. *Semb.* 2 *Sand.* 289. *But Sanders doubted of it.* *Dub. per Holt, Mod. Ca.* 198.

So, if Cattle driven to *London* are depaſtured by the Way, they may be diſtrained for the Rent of the Land where they are depaſtured. *R.* 2 *Vent.* 50. 3 *Lev.* 261.

Tho' put there with the Aſſent of the Leſſor. *R.* 2 *Vent.* 50. 3 *Lev.* 261.

Tho' it was a Common Inn at which the Cattle were depaſtured. *Qu.* 2 *Vent.* 50. *And the Party was relieved upon this in Equity,* 2 *Ver.* 130. *Pr. Ch.* 7.

But if Cattle, going to Market, are depaſtured by the Way, in Land belonging to a Common Inn, they cannot be diſtrained for the Rent of the Land. *Not R.* 3 *Lev.* 260. *But ſaid,* that they are not privileged tho' going to Market, 2 *Vent.* 50.

So, if *A.* Tenant in Common with *B.* and *C.* leaſes his 3d Part, the Cattle of *B.* or *C.* or any depaſturing by their Licence, cannot be taken for Rent by *A.* *R.* 2 *Vent.* 228, 283.

So, if Cattle eſcape into the Cloſe of *B.* and are freſhly purſued, they cannot be taken for Rent of the Cloſe. *R.* 1 *Brownl.* 170.

So, if Cattle which eſcape be diſtrained for a long Arrear of Rent, the Owner ſhall be aided in Equity. 2 *Ver.* 131. *Pr. Ch.* 8.

### (B. 2.) For a Rent-Charge.

But for a Rent-Charge, generally, the Cattle or Goods of a Stranger cannot be diſtrained. *Dub.* 15 *H.* 7. 17. *b.* *Cont.* 1 *Rol.* 669. *l.* 25. *Qu.* 1 *Rol.* 668. *l.* 13. *R. acc.* 1 *Rol.* 672. *l.* 12.

So,

So, if one Joint-tenant grants a Rent-Charge, the Cattle of his Companion cannot be diſtrained. 1 *Rol.* 669. *l.* 20.

So, if a Man makes a Leaſe, and afterwards grants a Rent-Charge out of the Land, the Cattle of the Leſſee are not diſtrainable: for he claims paramount the Charge. 1 *Rol.* 669. *l.* 45.

So, if a Rent-Charge be granted out of a Manor, the Cattle of the Copyholders are not diſtrainable. *R.* 1 *Rol.* 669. *l.* 52.

Or, if a Rent-Charge be claimed out of a Manor, by Preſcription. *Dub.* 1 *Rol.* 669. *l.* 50.

Yet where a Stranger claims under the Grantee after the Grant of a Rent-Charge, his Cattle are liable to Diſtreſs: As, the Cattle of a Leſſee, where the Demiſe was after the Grant.

So, if a Joint-tenant grants a Rent, and afterwards leaſes to his Companion for Years, his Cattle are diſtrainable. 1 *Rol.* 669. *l.* 30, 40.

So, if Part of the Land charged comes to a Tenant in Common of another Part of the ſame Land. *R. Hob.* 80. 1 *Rol.* 670. *l.* 5.

## (B. 3.) For an Amerciament, &c.

So the Cattle, or Goods, of a Stranger cannot be diſtrained for an Amerciament, &c. *Cont.* 1 *Rol.* 669. *l.* 7. *Acc. F. N. B.* 100. *H.*

*Vide Ante*, (A. 1, 3.)—*Leet*, (O. 10.)

## (B. 4.) For *Damage-feaſant*.

But all Chattels treſpaſſing upon Land may be diſtrained *Damage-feaſant*.

The Cattle of *A.* may be diſtrained *Damage-feaſant*, tho' put there by a Stranger, without his Privity. *R.* 1 *Rol.* 665. *D.*

So Ferrets, Greyhounds, &c. which chaſe Conies in a Warren, may be diſtrained *Damage-feaſant*. 1 *Rol.* 664. *l.* 40, 41.

But a Horſe upon which a Man rides upon the Corn of another, cannot be taken *Damage-feaſant*. 1 *Rol.* 664. *l.* 45. *Cont. per Ch. Juſtice.* 1 *Sid.* 440.

Nor a Net, which a Man carries in his Hand upon my Land. 1 *Rol.* 664. *l.* 43.

## (C) What not.

*Vide Ante*, (A. 1, &c.—B. 1, &c.)

BUT for a Rent Service, &c. Things fixed to the Freehold cannot be diſtrained: As, the Doors or Windows of a Houſe. *Co. L.* 47. *b.* 14 *H.* 8. 25. *b.*

Furnaces, Cauldrons, &c. faſtned to the Houſe. *Co. L.* 47. *b.*

* [Now allowed by the St. 11 Geo. 2. 19 *quod vide*.]

Nor Corn growing upon the Land. 1 *Rol.* 666. *l.* 47. *

Nor a Millſtone fixed to a Mill. 14 *H.* 8. 25. *b.*

Tho' it be removed to be picked for the Uſe of the Mill. 14 *H.* 8. 25. *b.*

Otherwiſe, if wholly ſevered, and removed from the Mill. 14 *H.* 8. 25. *b.*

So Things of which no one has a valuable Property, cannot be diſtrained: As, Things *Feræ Naturæ*, Deer, Conies, &c. in a Park, or Warren. *Co. L.* 47. *a.*

Nor Poultry, Fiſh, &c. 2 *Inſt.* 133.

Nor a Dog. *Co. L.* 47. *a.*

Nor Utenſils of Trade, or Things uſed in Trade: for it is for the publick Good, that Trade be encouraged; and therefore, the Books of a Scholar ſhall not be diſtrained. *Co. L.* 47. *a.*

Nor the Axe, or other Inſtruments of a Carpenter, *&c.* *Co. L.* 47. *a.*

Nor an Anvil in a Smith's Shop. 14 *H.* 8. 25. *b.*

Nor a Millſtone in a Mill. 14 *H.* 8. 25. *b.*

Tho' the Anvil be removed out of the Stock, or the Millſtone out of the Mill, to be picked. *R.* 14 *H.* 8. 25. *b.*

So by the *St.* 51 *H.* 3. *De Diſtrictione Scaccarii*, Beaſts of the Plough, or which improve the Land, as Sheep, *&c.* ſhall not be diſtrained, if there be other ſufficient Diſtreſs: which was an Affirmance of the Common Law. 2 *Inſt.* 132. *Co. L.* 47. *a.*

Nor a Saddle Horſe. 2 *Inſt.* 133. 1 *Rol.* 667. *l.* 35.

Nor Armour, Jewels, Apparel, *&c.* 2 *Inſt.* 132.

So an Horſe in a Smith's Shop ſhall not be diſtrained for the Rent of the Shop. *Co. L.* 47. *a.*

Nor an Horſe in an Hoſtry. *Co. L.* 47. *a.*

Nor Cloth, or Garments in a Taylor's Shop. *Co. L.* 47. *a.*

Nor Materials for Cloth in a Weaver's Shop. *Co. L.* 47. *a.* *R. Cro. El.* 550, 596.

Nor Corn, or Meal ſent to the Mill, or Market. *Co. L.* 47. *a.*

Tho' the Cloth, *&c.* be many Days at the Shop. *Per Brian*, 22 *Ed.* 4. 49. *b.* 1 *Rol.* 668. *l.* 35, 40.

Nor any Goods delivered to any Perſon in the Way of his Trade. 1 *Sal.* 250.

Or delivered to any one to be carried for Hire: for he is a common Carrier as to them. *R.* 1 *Sal.* 250.

Yet Beaſts of the Plough may be diſtrained, if there be no other Diſtreſs.

And Inſtruments of Trade, if they are unneceſſary. 1 *Sal.* 249.

So a Ship, Sails, or Tackle, for a Duty which ariſes from the Ship: As, for Toll for Goods laden upon the Ship. *R.* 1 *Sal.* 249.

So Utenſils of Trade, *&c.* can be taken for a Diſtreſs in the Nature of an Execution: As, for a Rate to the Poor. *Per Sand. Obſ. on St.* 22 *Car.* 2. *Ch.* 1. *Page* 39.

So an Horſe in a Cart loaden with Corn. *R.* 1 *Sid.* 422, 440.

So Goods ſhall be privileged from Diſtreſs, when they are in Uſe: As, an Axe, *&c.* with which a Man is cutting Wood. *Co. L.* 47. *a.*

An Horſe on which a Man is riding. *Co. L.* 47. *a.* 1 *Sid.* 440.

So, if a Man in a Journey, by Sickneſs, ſtays 2 or 3 Weeks, his Horſe ſhall be privileged. 1 *Rol.* 668. *l.* 5.

So, if an Horſe goes with Corn to a Mill, and is at the Houſe of the Mill till the Corn be ground. *R. Cro. El.* 550.

Or, during that Time he be put into the Stable. *Per* 2 *J. Warburton cont. Cro. El.* 550.

So, if an Horſe goes with Yarn, *&c.* to a Weaver, *&c.* or fetches Yarn thence, and carries it to a private Houſe to be weighed, and is hung there till the Yarn be weighed. *R. Cro. El.* 550, 596.

So, if Goods delivered to a Carrier be put into a Waggon in a private Barn. *R.* 1 *Sal.* 250.

Yet for a Rent-Charge, Horſes in a Cart loaden with Corn upon the Land, may be diſtrained. *R.* 1 *Sid.* 422, 440. 1 *Vent.* 36.

Tho' a Man be upon the Cart. *Qu.* 1 *Sid.* 440.

So Things ſhall not be diſtrained which cannot be known, to be replevied, or to be reſtored in the ſame Plight: As Money out of a Bag. 1 *Rol.* 666. *l.* 51.

Meal or Grain out of a Bag. *Vide* 1 *Rol.* 667. *l.* 4, 6.

Nor Corn in Shocks, or Straw; nor Hay in a Barn. 1 *Rol.* 666. *l.* 53. 667. *l.* 16. *R.* 2 *Mod.* 61. *R. Jon.* 197.

But now, by the *St.* 2 *W. & M.* 5. Any Perſon, having Rent-Arrear on a Demiſe, may ſeiſe Sheaves or Shocks of Corn, or Corn in the Straw, or looſe, or Hay in a Barn, Granary, or upon a Hovel, Stack, or Rick, or otherwiſe, upon any Part of the Land charged with ſuch Rent; and lock up and detain the ſame in the Place where found, *&c.* ſo as ſuch Corn be not removed to the Prejudice of the Owner, *&c.* till replevied or ſold.

And, before this Statute, Waggons or Carts with Corn might be diſtrained for Rent: for they might be ſafely reſtored. *Co. L.* 47. *a. Jon.* 197.

So now, Corn may be diſtrained, be it threſhed or not threſhed. *R. Lut.* 214.

[*Vide St.* 11 *Geo.* 2. 19.]

## (D) How a Diſtreſs ſhall be treated.

### (D. 1.) It ſhall be impounded.

EVERY Diſtreſs ought to be impounded in a lawful Pound. *Co. L.* 47. *b.*

A lawful Pound is either open or cloſe. *Co. L.* 47. *b.*

An open Pound is every Place in which the putting the Cattle does not make the Owner a Treſpaſſer, and where he may give them to eat and drink without Treſpaſs. *Doct. & Stud. l.* 2. *c.* 27. *Vide* 5 *H.* 7. 9. *b.*

Be it a common Pound erected on the Manor for this Purpoſe. *Co. L.* 47. *b.*

Or, the Cloſe of the Party, who makes the Diſtreſs. *Co. L.* 47. *b.*

Or, the Cloſe or Soil of a Stranger with his Leave. *Semb.* 5 *H.* 7. 9. *Co. L.* 47. *b.*

A Pound cloſe is where the Goods are put into an Houſe or other Place, where the Owner cannot enter to them. *Co. L.* 47. *b.*

Furniture, and Goods, which will be damaged by the Weather, or are in Danger of being ſtolen, ought to be put into a Pound cloſe; otherwiſe the Impounder ſhall anſwer for them. *Co. L.* 47. *b.*

If Cattle be impounded in a Pound cloſe, the Impounder ſhall ſuſtain them without Allowance for it. *Co. L.* 47. *b.*

But if they be put in an open Pound, they ſhall be ſuſtained at the Peril of the Owner. *Co. L.* 47. *b.*

By the Common Law, a Diſtreſs might be impounded where the Party pleaſed. 2 *Inſt.* 106.

By the *St.* of *Marlb.* 52 *H.* 3. 4. it ſhall not be impounded out of the County.

And this extends to all Goods, or Cattle diſtrained. 2 *Inſt.* 107.

And if a Diſtreſs for a Rent-Charge or *Damage-feaſant* be carried out of the County, the Party ſhall make Ranſom. 2 *Inſt.* 106.

If a Diſtreſs be for a Rent-Service, he ſhall be amerced. 2 *Inſt.* 106.

And the *St.* of *Marlb.* as to all taking of Cattle is confirmed by the *St. W.* 1. 16.

And by the *St.* 1 & 2 *Ph. & M.* 12. No Diſtreſs of Cattle ſhall be carried out of the Hundred, *&c.* unleſs to a Pound in the ſame County within 3 Miles diſtance, on Pain of 5 *l.* and treble Damages.

And no ſingle Diſtreſs of Goods or Cattle ſhall be impounded in ſeveral Places to inforce ſeveral Replevies, on Pain of 5 *l.* and treble Damages.

And

And none ſhall take above 4 *d.* for Impoundage of any one Diſtreſs, on Pain of 5 *l.* above the Money ſo taken.

But a Lord of a Manor, in a Diſtreſs for his Services, may impound upon his Manor, tho' it be in another County: for it is out of the Miſchief, tho' it be within the Words of *St.* of *Marlb.* 4. 22 *Ed.* 4. 11. 2 *Inſt.* 106.

So, if a Diſtreſs be out of the County, Treſpaſs does not lie; but he ought to have an Action on the Statute. *R. per* 3 *J.* 3 *Lev.* 48.

So Goods diſtrained ought to be removed within a convenient Time. *Mod. Ca.* 215.

If the Diſtreſs be for Rent, they ſhall be removed immediately. *Semb. Mod. Ca.* 215.

If the Party quits the Poſſeſſion after a Diſtreſs made, before Removal, the re-taking ſhall not be deemed a Reſcue. *Mod. Ca.* 216.

But by the *St.* 2 *W.* & *M.* 5. Corn or Hay diſtrained ſhall not be removed, *&c.* from the Place where ſeiſed, but kept there till replevied, or ſold. *

* [By the St. 11 Geo. 2. 19. Diſtreſſes may be impounded, ſecured, and ſold on the Premiſſes.

(D. 2.) *Parco fracto.* When, and by whom it lies.

If Cattle or Goods diſtrained be put into a lawful Pound, and the Owner, or a Stranger, takes them out of the Pound, a *Parco fracto* lies. *F. N. B.* 100. *E.*

And tho' a Servant made the Diſtreſs, the Maſter ſhall have the *Parco fracto.* *F. N. B.* 100. *E.*

So, if Cattle are impounded in the Soil of a Stranger, with his Conſent, the Diſtrainer, and not the Owner of the Soil, ſhall have the *Parco fracto.* *F. N. B.* 100. *E.*

A *Parco fracto* lies, tho' the Diſtreſs and impounding were without Cauſe. *R. Bend.* 30. 1 *Sal.* 247. 1 *And.* 31. 1 *Rol.* 673. *l.* 55.

But if the Lord of a Manor, or the Owner of the Soil, put out the Cattle, a *Parco fracto* does not lie; but an Action on the Caſe. *Per Jon. Win.* 81.

So, if the Diſtreſs was without Cauſe, and the Owner takes them from the Pound where the Door was unlockt, a *Parco fracto* does not lie. 1 *Rol.* 674. *l.* 5. *Co. L.* 47. *b.*

The Writ lies *vi & armis.* *F. N. B.* 100. *F.*

But the Writ need not ſhew to whom the Property of the Cattle or Goods belongs. *F. N. B.* 100. *F.*

Nor what Kind of Cattle they are. *F. N. B.* 100. *F.*

So a Declaration in a *Parco fracto* need not ſhew a Title to make the Diſtreſs. 1 *Sal.* 247.

To a *Parco fracto* the Defendant ſhall plead *Not guilty.*

If he ſays, that being Lord of the Soil he broke the Lock to put in others of his own, it is ill: for it amounts to the General Iſſue: for if the Cattle did not eſcape, it is not a Breach of the Pound. *Win.* 80.

(D. 3.) *Reſcous.* When it lies.

So, if a Diſtreſs be reſcued before the impounding, the Party who made the Diſtreſs may have a Writ of *Reſcous.* *F. N. B.* 101. *C.*

If the Diſtreſs was by a Servant, the Maſter ſhall have *Reſcous.* *F. N. B.* 101. *F.*

*Reſcous* ſhall be, where a Man reſcues, or ſets at large, Goods lawfully diſtrained. *Co. L.* 160. *b.* *Vide Reſcous,* (A.)

If Cattle diſtrained go into the Houſe of the Owner, and he upon Demand refuſes Delivery, it will be a *Reſcous.* *Co. L.* 161. *a.*

By

(D. 4.) Remedy for a *Reſcous.*

By *St.* 2 *W. & M.* 5. On a Pound-Breach or *Reſcous* of Goods diſtrained for Rent, the Perſon grieved, by ſpecial Action on the Caſe, may recover treble Damages, and Coſts of Suit againſt the Offender, or Owner of the Goods, if they be found to come to his Uſe or Poſſeſſion. *Lut.* 213. *Vide Pleader*, (2 S. 29.) *

* [*Vide the St.* 11 *Geo.* 2. 19. *S.* 10.]

So, by the Common Law, the Maſter, for whom the Diſtreſs was made, may have Remedy by Writ of *Reſcous*. *F. N. B.* 101. *F. Vide Reſcous*, (C.)

So the Party may maintain an Action on the Caſe on the *St.* 2 *W. & M.* tho' no Notice of the Diſtreſs was given to the Leſſee: for Notice ſignifies nothing to a Wrong-doer. *R. Lut.* 214. *Vide Pleader*, (2 S. 29.)

(D. 5.) When *Reſcous* does not lie.

But Goods cannot be reſcued before they are in the Poſſeſſion of him who diſtrains: for if he is prevented from making the Diſtreſs, an Action on the Caſe lies, not *Reſcous*. *F. N. B.* 102. *F.*

So, if he who takes the Diſtreſs, quits the Poſſeſſion of the Goods, the taking of them will not be a *Reſcous*. *R. Mod. Ca.* 215.

So a Man may make *Reſcous*, if his Cattle, or Goods be taken without Cauſe; Or, if he be frequently diſtrained, ſo that he cannot manurè his Land, he ſhall have an *Aſſiſe de ſovent Diſtreſs*. 4 *Co.* 11. *b.*

As, if the Lord diſtrains for Rent when nothing is in Arrear. 4 *Co.* 11. *b. Co. L.* 160. *b.*

So, if he diſtrains for Rent due by Enroachment, the Tenant may tender ſo much as is due of Right, and make *Reſcous* if it be refuſed. 4 *Co.* 11. *b.*

So, if the Tenant tenders the Rent before Diſtreſs, which is refuſed, and the Lord afterwards diſtrains, the Tenant may make *Reſcous*. *Co. L.* 160. *b.* 2 *Inſt.* 107.

So, if the Lord diſtrains out of his Fee, the Tenant may make *Reſcous*. *Co. L.* 161. *a. Vide Ante*, (A. 3.)

Or in a Highway, or Place where by Law he ought not to diſtrain. *Co. L.* 160. *b. Vide Ante*, (A. 3.)

So, if the Cattle of a Stranger are taken, the Owner may make *Reſcous*. *Co. L.* 160. *b.*

Or Beaſts of the Plough, *&c.* which ought not to be diſtrained. *Co. L.* 161. *a. Vide Ante*, (B. 1, &c.—C.)

Or any Thing not diſtrainable by Common Law, or Statute. *Co. L.* 161. *a.*

So a *Reſcous* may be made upon a Diſtreſs for a Rent-Charge, as well as for a Rent-Service, if the Diſtreſs is not lawful. *Co. L.* 160. *b.*

Or, upon a Diſtreſs for an Amerciament, which does not appear to be lawful;

As, if it be upon a Preſentment in a Leet for diverting a Highway; for it cannot be diverted, tho' it may be ſtopped or obſtructed: but to divert is proper for a Water-Courſe. *R.* 1 *And.* 234.

## (D. 6.) But a Diſtreſs ſhall not be uſed.

So a Diſtreſs ought not to be abuſed; for that makes him, who diſtrained, a Treſpaſſer *ab initio*. *Vide Treſpaſs*, (C. 2.)

As, if he drives it to another County, and there ſells it. *R.* 1 *And.* 65.

If a Horſe 3 Times leaps over the Pound, for which he ties the Horſe to a Stake in the Pound, and the Horſe chokes himſelf by the Rope. 1 *Rol.* 673. *l.* 26.

If a Man works Cattle diſtrained. 1 *Leo.* 220.

If a Man diſtrains an Hide, and for Preſervation, tans it. *R. Cro. El.* 783. 2 *Rol.* 562. *l.* 25.

If he diſtrains a Hogſhead of Beer, and taſtes the Liquor. *R. Mod. Ca.* 215, 6.

So, if a Man milks a Cow; tho' it be for the Benefit of the Cow. *R.* 1 *Rol.* 673. *l.* 32. *Noy* 119. 1 *Leo.* 220. (*Vide* 2 *Cro.* 148. *Semb. cont.*)

If he cords a Trunk for greater Security, being informed that there are in it Things of Value. *D.* 1 *Vent.* 37.

But uſing for the Benefit of the Owner ſhall be allowed: As, if he ſcours Armour taken for a Diſtreſs. *Vide Cro. El.* 783.

So, if Cows, Horſes, *&c.* are taken in *Withernam*, they may be milked or worked in a reaſonable Manner: for they are delivered to the Party in Lieu of his own Cattle. *R.* 1 *Leo.* 220.

And when the Cattle are reſtored, the Labour ſhall be for their Diet. *Ow.* 46.

So, if ſeveral Barrels of Beer are diſtrained for Rent, and the Diſtrainer takes the Liquor of one; he ſhall be a Treſpaſſer only for that Barrel. *Mod. Ca.* 216. *

* [By the *St.* 11 *Geo.* 2. 19. *S.* 19, 20. Diſtreſſes for Rent ſhall not be deemed unlawful for any Irregularity or unlawful Act afterwards done by the Party diſtraining, nor the Party deemed a Treſpaſſer *ab initio*: but the Parties grieved thereby may recover Satisfaction for the ſpecial Damage and no more, in an Action of Treſpaſs, or on the Caſe, and the Plaintiff recovering ſhall be paid his full Coſts of Suit. But no Tenant ſhall recover in ſuch Action, if Tender of Amends hath been made by the Party diſtraining.]

## (D. 7.) Nor ſold.

(D. 7.) By the Common Law.

So, by the Common Law, a Diſtreſs for Rent cannot be ſold.

Yet, by the Common Law, the King might ſell it.

But not the Cattle of an Under-Leſſee of his Tenant after the Rent incurred: tho' they might be diſtrained. 2 *Rol.* 159. *l.* 45.

So a Diſtreſs for a Fine, or Amerciament, in a Leet the Lord may ſell, or impound, at his Pleaſure. 8 *Co.* 41. *b.*

So, by Cuſtom, he may ſell upon a *Diſtringas pro certo Letæ*, or for an Amerciament in a Court-Baron. *R.* 1 *Sal.* 379.

So where a Statute gives an Execution for a Penalty by Diſtreſs, without more, the Officer may ſell. *R.* 2 *Jon.* 25. *R.* 1 *Sal.* 379.

(D. 8.) When by Statute.

But now, by the *St.* 2 *W. & M.* 5. If Goods be diſtrained for Rent due, on Demiſe, or Contract, and the Owner does not replevy them in 5 Days next after ſuch Diſtreſs taken, and Notice thereof with the Cauſe of taking, left at the chief Manſion, or other moſt notorious Place of the Premiſſes charged with the Rent, Then after ſuch Diſtreſs, Notice and 5 Days, the Diſtrainer, with the Sheriff, Underſheriff, or Conſtable of the Hundred or Place, may cauſe the Goods to be appraized by 2 ſworn Appraizers, (whom the Sheriff, Underſheriff, *&c.* may ſwear) and afterwards may ſell the ſame for the beſt Price that can be gotten, towards Satisfaction of the Rent, and Charges of ſuch Diſtreſs, Appraizement, and Sale, leaving the Overplus, if any, in the Hands of the Sheriff or Conſtable for the Owner's Uſe.

If a Diſtreſs be for Rent, Notice of it ought to be given.

And all Goods diſtrained, except Corn and Hay, ought to be removed immediately. *R. Mod. Ca.* 215.

But Notice may be given to the Tenant in Perſon, as well as left at his Houſe, *&c.* *R. T.* 7 *W.* 3. *B. R. inter Walter* and *Rumball.* 1 *Sal.* 247. (*Vide* 1 *Ld. Ray.* 54.)

And if they are not the Goods of the Tenant himſelf, Notice to the Owner of the Goods is ſufficient. *R.* 4 *Mod.* 394, 5. in *Trover*, or other Action for the Goods, by the Owner. 1 *Sal.* 247.

But if the Tenant had brought a *Replevin* for the Goods, Notice to the Owner had not been ſufficient, without Notice alſo at the Manſion of the Tenant, or other notorious Place upon the Premiſſes. 1 *Sal.* 247. (*Vide* 1 *Ld. Ray.* 54.)

So, if a Diſtreſs be upon Land within 2 Hundreds, the Conſtable of the Hundred, where the Diſtreſs was impounded, may ſwear the Appraizers. *R.* 4 *Mod.* 395. 1 *Sal.* 247. (*Vide* 1 *Ld. Ray.* 55.)

Yet a Diſtreſs cannot be conveyed to a remote County. 1 *Sal.* 247.

A Sale by the Diſtrainer or his Servant is ſufficient, tho' the Sheriff, *&c.* be not preſent at the Sale. *R. T.* 7 *W.* 3. *B. R. inter Walter* and *Rumball. Vide* 4 *Mod.* 390.

And a Sale for a Price at which they were appraized, ſhall be intended the beſt Price, if the contrary does not appear. *R. inter Walter* and *Rumball*, 4 *Mod.* 391. (*Vide* 1 *Ld. Ray.* 55.)

So now, by the *St.* 4 *Geo.* 2. 28. Remedy ſhall be by Diſtreſs and Sale, for Rents-ſeck, of Aſſiſe, and Chief-Rents, paid 3 Years in 20 Years before that Seſſion of Parliament, or afterwards created, as for Rent reſerved on a Leaſe. *

[* By the *St.* 11 *Geo.* 2. 19.
Notice of the Place where Goods diſtrained are depoſited ſhall within one Week be given to the Leſſee, or left at his laſt Place of Abode; and if after a Diſtreſs for Rent, taken of Corn, *&c.* growing, *&c.* the Rent, and Coſts of the Diſtreſs be paid, or tendred, the Diſtreſs ſhall ceaſe, and the Corn, *&c.* ſhall be delivered to the Tenant.
And *by the ſame Stat.* Diſtreſſes may be impounded, appraized, and ſold on the Premiſſes.]

(D. 9.) When not.

Yet by *St.* 2 *W. & M.* 5. If Diſtreſs and Sale ſhall be made for Rent, when no Rent is due, the Owner of the Goods diſtrained may by Treſpaſs, or Action on the Caſe againſt the Diſtrainer, his Executor or Adminiſtrator, recover the double Value of the Goods diſtrained and ſold, with full Coſts. *Vide* 4 *Mod.* 231.

And the Plaintiff need not alledge a Demiſe in Form. *R.* 4 *Mod.* 232.

And it is ſufficient to ſay, that the Defendant took the Goods *nomine Diſtrictionis*. *R.* 4 *Mod.* 232.

## Replevin.

When *Replevin* lies upon a Diſtreſs, *Vide* in *Replevin.—Pleader*, (3 K. 1, &c.)

*Vide* more of Title *Diſtreſs*, in *By-Law*, (D. 2.)—*Pleader*, (2 S. 19.—3 M. 25.)—*Rent*, (D. 3, &c.)—*Seiſin*, (E.)—*Sewers*, (E. 6.)

# DISTRIBUTION.

## Diſtribution of a Bankrupt's Eſtate.

*Vide Bankrupt*, (D. 30, 31.)

## Diſtribution of an Inteſtate's Eſtate.

*Vide Adminiſtration*, (H.)—*Chancery*, (3 D. 1, &c.)

## Diſtributive Words.

*Vide Parols*, (A. 13.)

# DISTRINGAS.

*Vide Enqueſt*, (C. 6.)—*Proceſs*, (D. 7.)

# DISTURBANCE.

*Vide Action upon the Caſe for a Diſturbance.*—*Pleader*, (3 I. 6.)—*Quare Impedit*, (D.)

# DIVINE SERVICE.

*Vide Sacraments*, (B.—E.)

# DIVORCE.

*Vide Abatement*, (H. 43.)—*Baron and Feme*, (C. 1, &c.)—*Dower*, (A. 1, 2.)—*Pleader*, (2 Y. 12.)

# DOGS.

*Vide Chaſe*, (M.)

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# DONATIVE.

## (A) The Original of it, &c.

THE King founds a Church, Hoſpital, or Chapel, and exempts it from the Juriſdiction of the Ordinary; this ſhall be a Donative. *Co. L.* 344. *a.*

So, if he founds it, tho' he does not exempt it by expreſs Words. *Co. L.* 344. *a.*

So, if a Subject, by the King's Licence, founds a Church, or Chapel, to be exempt from the Juriſdiction of the Ordinary, it ſhall be a Donative: and this was the Original of all Donatives. *Co. L.* 344. *a.*

Originally all Abbies and Priories were Donative.

So all the Biſhopricks in *England* were Donative by the Delivery of a Crozier, and Ring, till by a Charter 5 *June* 17 *Joh.* they were made eligible. *Co. L.* 344.

A Prebend, Chantry, and Chapel may be Donative. *Co. L.* 344. *a.*

And, at this Day, a Parochial Church of the King's Foundation, may be Donative, and ſhall have the Cure of Souls. 2 *Rol.* 341. *l.* 20.

So, if it be of the Foundation of a Subject. *Semb. Co. L.* 344. *a.* 2 *Rol.* 341. *l.* 30. 2 *Cro.* 63.

But

But generally, a Donative has not *Curam Animarum*, where it has not Preſentation and Inſtitution. *Per Twiſd.* and *Keeling*. 1 *Mod.* 11.

A Donative is exempted from the Juriſdiction of the Ordinary. *Co. L.* 344. *a.*

And therefore, the Incumbent need only have the Donation from the Patron, without Admiſſion or Inſtitution by the Ordinary. *Co. L.* 344. *a.* *Dav.* 46. *b.* 2 *Cro.* 63.

And a Lapſe does not incur for Want of a Donation, if it be not ſpecially provided in the Foundation. *Co. L.* 344. *a.* 2 *Cro.* 517.

The Ordinary cannot viſit; but the Patron may. *Co. L.* 344. *a.* *Dav.* 46. *b.*

If the King be Patron, he viſits by his Chancellor. *Co. L.* 344. *a.* *Vide Viſitor*, (A. 2.)

If a Subject, he viſits by Commiſſioners. *Co. L.* 344. *a.* 2 *Rol.* 341. *l.* 30. *Vide Viſitor*, (A. 4.)

So the Patron ſolely may deprive for Hereſy, or other Offence. *R. Yel.* 61, 2.

The Patron ſolely ſhall inquire of the Reparation, and Ornaments. 1 *Mod.* 90.

If the Biſhop intermeddles with that which belongs to the Patron, a Prohibition ſhall go. 1 *Mod.* 90.

Yet the Incumbent ought to be *infra ſacros Ordines*; for his Function is Spiritual. *Co. L.* 344. *a.* If the Donative has a Cure. 2 *Rol.* 341. *l.* 35. *R. Yel.* 61.

And if he be diſturbed, the Patron ſhall have a *Quare Impedit præſentare ad Eccleſiam*, and ſhall count upon the Special Matter. *Co. L.* 344. *a.* *Vide Pleader*, (3 I. 6.)

So he may be cited to take a Licence from the Biſhop to preach; and a Prohibition does not go. *R.* 1 *Mod.* 90. 2 *Keb.* 876.

Or for marrying there without Licence. *R. per* 3 *J.* 1 *Sid.* 432. 1 *Mod.* 22.

So if he preſents to a Donative by Simony, it will be within the *St.* 31 *El.* 6. *R. Cro. Car.* 331.

But if it be doubted, whether it be Donative or Preſentative, and any ſues for Induction, a Prohibition does not go: for till Induction the Incumbent has no Remedy to try the Right; and if it be a Donative, the Induction is null. *R. Cro. El.* 653.

So, if a Parſon preſents his Clerk to a Donative, to the Ordinary, who admits and inſtitutes him; it ſhall never be Donative afterwards, but always Preſentative. *Co. L.* 344. *a.* 2 *Rol.* 342. *l.* 45. 2 *Cro.* 63.

But a Preſentation to a Donative by a Stranger, and Admiſſion and Inſtitution upon it, do not make the Church Preſentative. *Co. L.* 344. *a.* 2 *Rol.* 342. *l.* 50.

Or, to a Donative created by the King's Letters Patent. *Per* 2 *J. Sal.* 541.

If an Incumbent of a Donative reſigns his Church to the Patron, the Property is deveſted out of him, without other Ceremony. *R.* 2 *Cro.* 63. *Yel.* 61. *Mo.* 765.

And if there be two Patrons, if he reſigns to one of them, if the other aſſents. *R.* 2 *Cro.* 63.

So, if he reſigns to one of the Patrons and a Stranger. *R. Yel.* 61.

A Reſignation in the Words of the Donation, as, *of his Church*, amounts to a Reſignation of the Whole. *R.* 2 *Cro.* 63. *Yel.* 61.

But if the Patron refuſes to make a Donation when the Church is Parochial, the Ordinary may compel him to make it: for he is not exempt, tho' the Church is. *Per* 4 *J. Yel.* 61.

# DOUBLE DECLARATION.

*Vide Pleader*, (C. 33.)

# DOUBLE PLEA.

*Vide Pleader*, (E. 2.)

# DOUBLE REPLICATION.

*Vide Pleader*, (F. 16.)

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# DOWER.

## (A) Dower by the Common Law.

### (A. 1.) What Wife ſhall be endowed.

DOWER is by the Common Law, by Cuſtom, *Ad Oſtium Eccleſiæ*, *Ex oſficio Patris*, or *De la plus beale*.

Dower by the Common Law is, when a Woman takes an Huſband ſeiſed in Fee, in General Tail, or as Heir to a Special Tail, after the Death of her Huſband, (if ſhe be then 9 Years old,) ſhe ſhall be endowed of a 3d Part of all Lands and Tenements of which her Huſband was ſeiſed during the Coverture, to hold in Severalty for her Life. *Lit. S.* 36.

Every Wife, regularly, ſhall be endowed.

Tho' ſhe was a *Nief* before Marriage. *Co. L.* 31. *a.*

Tho' ſhe was divorced *à Menſa & Thoro*. *Co. L.* 33. *b.* or divorceable *à Vinculo*, if the Huſband died before the Divorce. *Co. L.* 33. *a.*

Tho' the Wife was attainted for Felony, *&c.* if ſhe was afterwards pardoned before the Death of her Huſband. *Co. L.* 33. *a.* *Vide Poſt*, (F. 1.)

Tho' her Huſband was an Ideot, or *Non compos*, or outlawed. *Co. L.* 31. *a.*

Attainted for Felony, Treſpaſs, *Præmunire*, Hereſy, *&c.* *Co. L.* 31. *a.*

Tho' the Huſband was a Villein to a Common Perſon, if the Huſband died before the Entry of his Lord. *Co. L.* 31. *a.*

So, where the Huſband was attainted for Treaſon, after the Attainder reverſed by Error. *Mo.* 639.

### (A. 2.) What, not.

But if the Wife of a Subject be an Alien, ſhe ſhall not be endowed. *Co. L.* 31. *b.* *Vide Alien*, (C. 1.)

Nor the Wife of an Alien. *Co. L.* 31. *a.*

Nor the Wife of the King's Villein. *Co. L.* 31. *a.*

So, if an Alien, after Alienation by her Husband, be made a Denizen, she shall not be endowed. *Co. L.* 33. *a.*

So, if the Marriage be divorced *à Vinculo*, the Woman shall not be endowed. *Co. L.* 33. *b.* 1 *Rol.* 681. *R.* 47 *Ed.* 3. *pl.* 78.

Nor, if a Wife elopes from her Husband, and be not reconciled. *Vide Post*, (F. 2.)

So the Woman shall not be endowed, if it be not a lawful Marriage: for it shall be tried by the Bishop. 1 *Leo.* 53.

So, if the Husband be attainted for High Treason, his Wife shall not be endowed. *Co. L.* 31. *a.* for the *St.* 1 *Ed.* 6. 12. which allows Dower to the Wife of a Person attainted of Treason, is repealed as to this by the *St.* 5 & 6 *Ed.* 6. 11. *Co. L.* 37. *a.* 41. *a.* *Vide Post*, (F. 1.) *Vide Forfeiture*, (B. 2.)

Tho' the Treason was committed after the Title to Dower commenced. *Co. L.* 31. *a.* 1 *Leo.* 3.

So a Jew, who is not converted to Christianity with her Husband, shall lose her Dower. *Co. L.* 32. *a.*

So the Wife shall not have Dower, if the Husband be attainted for Treason, tho' afterwards pardoned. 1 *Leo.* 3.

So, if an Husband takes a Wife, living his former Wife; the 2d Marriage is null, and the Wife shall not be endowed. *Perk. S.* 304.

So, if a Wife takes a 2d Husband in the Life of the former, she shall not be endowed. *Perk. S.* 305.

So, if a Woman be contracted to a Husband, who dies before the Marriage is compleated. *Perk. S.* 306.

## (A. 3.) At what Age.

A Wife shall be endowed if she be of the Age of 9 Years at the Death of her Husband; tho' she cannot assent to the Marriage before the Age of 12 Years. *Co. L.* 33. *a.*

Tho' the Husband was under the Age of 9 Years. *Co. L.* 33. *a.* 40. *a.*

Tho' the Husband aliens his Land before the Wife attains her Age of 9 Years. *Co. L.* 33. *a.*

Tho' the Wife was above the Age of 100 Years; so that by Possibility she could not have Issue. *Co. L.* 40. *a.* 1 *Rol.* 675. *l.* 11.

But a Wife shall not have Dower by the Common Law, if she be under the Age of 9 Years at the Death of her Husband. *Co. L.* 33. *a.* *Vide* 1 *Rol.* 675. *l.* 15.

Yet a Wife may have Dower *Ex Assensu Patris*, or *Ad ostium Ecclesiæ* before such Age. *Co. L.* 37. *a.*

## (A. 4.) Of what Seisin.

A Wife shall be endowed where the Husband had a Seisin in Law, as well as where he had an actual Seisin. *Co. L.* 31. *a.*

And therefore, if after a Descent of Land, the Husband dies before Entry, his Wife shall be endowed. *Co. L.* 31. *a.*

So a Wife shall be endowed, tho' the Seisin did not continue till the Death of the Husband: As, if a Man seised in Fee takes a Wife, and then sells, or aliens his Lands to another and his Heirs. *Co. L.* 32. *a.*

So a Wife shall be endowed, tho' the Estate of her Husband be evicted by an Elder Title, after *Cesser* of the Eviction: As, if the Grandfather enfeoffs the Father, and afterwards the Wife of the Grandfather recovers

Dower

Dower from him, and dies; the Wife of the Father ſhall be afterwards endowed of the ſame Land. *Co. L.* 31. *b.*

So, if Land deſcends to the Father, who dies, and his Wife is endowed; if the Wife of the Grandfather recovers her Dower againſt her, and afterwards dies, the Wife of the Father ſhall have the Land after her Death. *Co. L.* 31. *b.*

So the Wife ſhall be endowed, where the Eſtate of the Huſband is evicted by Covin: As, if a Man recovers againſt him by his Reddition, without Right. 2 *Inſt.* 349.

So by the *St. W.* 2. 4. If there be a Recovery by Default, and he cannot ſhew that the Recoveror had a Right. 2 *Inſt.* 349.

So a Wife ſhall be endowed where the Huſband had the Eſtate, tho' it was upon Truſt to give to another: As, if a Feoffment be to *A.* upon Condition that he enfeoff *B*; the Wife of *A.* ſhall be endowed. 1 *Rol.* 678. *l.* 36.

If a Bargain and Sale be to *A.* in Fee, in Conſideration, that he redemiſe to the Bargainor, upon a Condition to be void; tho' it be in the Nature of a Mortgage, yet the Wife of *A.* ſhall be endowed: For it ought to be a Bargain to two if he would avoid the Dower of the Wife; and therefore Equity will not give Relief. *Certified to Chancery, Cro. Car.* 191.

## (A. 5.) Of what, not.

But a Wife ſhall not be endowed, where her Huſband had Seiſin only for an Inſtant, or as an Inſtrument: As, if *Ceſtuy que uſe* after the *St.* 1 *R.* 3. and before the *St.* 27 *H.* 8. 10. had made a Feoffment, his Wife would not be endowed. *Co. L.* 31. *b.*

So, if a Feoffment be now to *B.* and his Heirs, to the Uſe of *C.* and his Heirs; the Wife of the Feoffee ſhall not be endowed.

Nor, the Wife of the Conuſee of a Fine who renders the Eſtate to the Conuſor. *Co. L.* 31. *b.* 2 *Co.* 77. *a.*

If a Copyhold eſcheats to the Lord of a Manor, who afterwards grants it by Copy; his Wife ſhall not be endowed of it. *R.* 4 *Co.* 24. *a.*

If a Mortgagor pays the Money at the Day, the Wife of the Mortgagee ſhall not be endowed. *Cro. Car.* 191.

Or, if he redeems by Conſent after the Day. *Q.* 1 *Rol.* 679. *O.*

So, if Tenant for Life makes a Feoffment; tho' he has a Fee, who gives a Fee, his Wife ſhall not be endowed: for the ſame Inſtant that he had a Fee, it was out of him. 2 *Cro.* 615. 1 *Rol.* 676. *l.* 45.

So, if a Joint-tenant makes a Feoffment; tho' the Eſtate was ſevered for an Inſtant. 2 *Cro.* 615.

So, if Tenant in ſpecial Tail makes a Feoffment, with a Letter of Attorny, *&c.* and then takes a Wife, and afterwards Livery is made. *R.* 2 *Cro.* 615. 1 *Rol.* 676. *l.* 50.

So a Wife ſhall not be endowed, where the Seiſin of her Huſband is wholly defeated: As, if Land deſcends to *A.* who enters, and then his Mother recovers Dower from him, and afterwards dies; the Wife of *A.* ſhall not be endowed: for the Seiſin of *A.* was entirely defeated. *Co. L.* 31. *a.*

If a Feoffor enters upon a Feoffee for a Condition broken; the Wife of the Feoffee ſhall not be endowed: for his Seiſin is defeated by the Re-Entry of the Feoffor. *Perk. S.* 311, 312. 1 *Rol.* 474. *O.*

If Land taken in Exchange, or allotted upon Partition, be afterwards recovered in Value, upon Eviction of the Land given in Exchange, *&c.* the Wife ſhall not be endowed of the Land recovered. *Perk. S.* 309, 310.

So,

So, if the Seiſin of the Huſband be evicted by a Recovery upon Title, his Wife ſhall not be endowed. 2 *Inſt.* 349.

So, if Tenant in Special Tail makes a Diſcontinuance, and takes back an Eſtate in Fee, and afterwards takes another Wife, and dies, and the Iſſue in Tail enters; the 2d Wife ſhall not be endowed: for the Seiſin of the Fee is defeated by the Remitter. *Co. L.* 31. *b.* *Dy.* 41. *a.*

Nor, where the Eſtate of the Huſband is determined: As, if a Feoffment, or Covenant to ſtand ſeiſed, *&c.* be to the Uſe of *B.* and his Heirs till *C.* marries; *B.* dies, his Heir takes a Wife, and dies, and then *C.* marries; the Wife ſhall not be endowed. *Dub.* 1 *Rol.* 676. *F.*

So a Wife ſhall not be endowed, where her Huſband had not Seiſin in Fact, or in Law, during the Coverture. *Co. L.* 31. *a.*

So, if a Bargain and Sale be upon Condition, and the Condition be broken, and the Bargainor dies before Entry; his Wife ſhall not be endowed: For tho' the Uſe reveſts without Entry, yet by the *St.* 27 *H.* 8. the Uſe is incorporated with the Land, and without Entry he is not ſeiſed of the Land, and therefore his Wife ſhall not be endowed. 6 *Co.* 34. *a.*

So a Wife ſhall not be endowed of Land given in Exchange, and alſo of Land taken in Exchange: but ſhe has her Election to have the one or the other. *Co. L.* 31. *b.*

## (A. 6.) Of what Eſtate.

A Woman ſhall be endowed, where her Huſband was ſeiſed in Fee, in Tail General, or as Heir in Special Tail. *Lit. S.* 36.

And, generally, in every Caſe, where the Iſſue which the Huſband may have by his Wife by Poſſibility may inherit, as Heir to the Huſband to ſuch Eſtate in the Tenements as the Huſband has, his Wife ſhall be endowed. *Lit. S.* 53.

And therefore, where Land is given to *A.* and the Heirs of his Body upon *B.* his Wife begotten; tho' *A.* be Donee in Special Tail, *B.* ſhall be endowed: for her Iſſue may inherit the ſame Eſtate as Heir to the Huſband. *Lit. S.* 53.

So, if an Eſtate be limited to *A.* for Life, Remainder immediately to him in Fee, or in Tail, without any meſne Remainder; his Wife ſhall be endowed: for he has both Eſtates in him. 1 *Rol.* 677. *l.* 10, 25. *Perk. S.* 338.

So, if there be a meſne Remainder for Years; but *ceſſet Executio* during the Term. *Perk. S.* 336. *R.* 1 *Sal.* 254. *Lut.* 729.

So, if there be a meſne Remainder for Life, who ſurrenders his Eſtate to the Tenant for Life. 1 *Rol.* 677. *l.* 18.

Tho' the Surrender be upon Condition: for the Eſtate is gone till the Condition is broken. 1 *Rol.* 677. *l.* 20.

So, if an Eſtate be to *A.* for Life, Remainder to *B.* for Years, Remainder to *A.* in Tail or in Fee; the Wife of *A.* ſhall be endowed. *R.* 1 *Sal.* 254. *Lut.* 733.

So, if an Eſtate be limited to *A.* for Years, Remainder to *B.* in Tail, or in Fee; the Wife of *B.* ſhall have Dower of the Reverſion, or Remainder. *Lut.* 733.

So, if a Man makes a Leaſe for Years, rendring Rent, and takes a Wife, ſhe ſhall be endowed of the Reverſion and a 3d Part of the Rent. *Co. L.* 32. *a.* *R.* 1 *Rol.* 678. *l.* 15.

Yet if no Rent be reſerved upon the Leaſe for Years, Execution ſhall ſtay during the Term. *R.* 1 *Rol.* 678. *l.* 20.

So, if a Term be to *A.* Remainder to *B.* in Tail, *&c.* tho' the Term be upon Truſt to attend the Inheritance, the Wife of *B.* ſhall not have Dower till the Expiration of the Term. *R. Ca. Parl.* 71.

And if *B.* ſells, and the Term is aſſigned to defend the Purchaſer; *Chancery* will not decree the Truſt of the Term to the Wife for a 3d Part. *R. Ca. Parl.* 69.

But a Term upon Truſt to attend the Inheritance ſhall be decreed in Equity to Tenant in Dower, againſt the Heir at Law. *R. Ca. Parl.* 70.

So, if the Huſband has a defeazable Eſtate in Fee, Tail, *&c.* his Wife ſhall be endowed till his Eſtate be defeated. 1 *Rol.* 677. *l.* 27, 40. *Vide Ante*, (A. 5.)

As, if Huſband and Wife Leſſees for Life make a Surrender to the Leſſor, which is avoidable by the Wife Leſſee; yet the Wife of the Leſſor ſhall be endowed till the Surrender be defeated. 1 *Rol.* 667. *l.* 30, 45.

So, the Wife of a Diſſeiſor, till the Diſſeiſin be avoided. 1 *Rol.* 677. *l.* 47.

So, if Huſband and Wife, and *A.* be Tenants in Common, and the Huſband dies before Partition; the Wife ſhall be endowed of his Part againſt his Heir. *R.* 3 *Lev.* 84.

## (A. 7.) Of what, not.

But if there are Joint-tenants in Fee, and one dies; his Wife ſhall not be endowed: for the Eſtate ſurvives. *Co. L.* 31. *b.*

So, if the Huſband be ſeiſed in Special Tail; the 2d Wife ſhall not be endowed: for the Iſſue of the 2d Wife cannot by Poſſibility inherit the ſame Eſtate as Heir to the Huſband. *Lit. S.* 53.

Tho' the Iſſue of the Wife by Poſſibility may inherit to him: As, if Tenant in Tail General makes a Feoffment, and takes back an Eſtate to him, and his Wife, and the Heirs of their Bodies, the Wife dies, and the Huſband takes another Wife, and dies; the 2d Wife ſhall not be endowed: for during his Life he was ſeiſed in Special Tail, tho' the Iſſue by the 2d Wife by Poſſibility might inherit. *Co. L.* 31. *b.*

So, if the Huſband has only an Eſtate for Life, his Wife ſhall not be endowed:

Tho' the Eſtate be to him and his Heirs for the Life of *B.* 1 *Rol.* 676. *l.* 43. *D. cont.* 1 *Sand.* 261. *Vide Eſtates.*

Tho' the Inheritance be alſo to the Tenant for Life, if it be not executed in him: As, if it be to *A.* for Life, Remainder to *B.* for Life, or in Tail, Remainder in Fee, or in Tail to *A*; the Wife of *A.* ſhall not be endowed. 1 *Rol.* 677. *l.* 15. *Perk. S.* 333, 335. 1 *Sal.* 254.

So, if an Eſtate be granted to *A.* and *B.* and to the Heirs of *B.* who dies; his Wife ſhall not be endowed: for the Fee was not intirely executed during the Life of *A. Perk. S.* 334.

So, if the Remainder-man for Life; or in Tail grants his Eſtate to Tenant for Life: for it was *quaſi* a Reverſion in him in Remainder. 1 *Rol.* 677. *l.* 5.

So, if there be a Remainder for the Life of Tenant for Life upon Truſt to preſerve contingent Uſes. *R.* 3 *Lev.* 437.

So, if the Huſband has only a Term for Years, his Wife ſhall not be endowed by Law, or Equity. *Ca. Parl.* 72.

So, if *A.* be ſeiſed in Truſt for *B.* in Fee, *&c.* the Wife of *B.* ſhall not be endowed in Law, or Equity. *Ca. Parl.* 71.

## (A. 8.) Of what Lands and Tenements.

A Wife ſhall be endowed of the 3d Part of all ſuch Lands and Tenements of which her Huſband was ſeiſed during the Coverture.

And therefore, a Wife ſhall be endowed of a Rent-Service, Charge, or Seck. *Co. L.* 32. *a.*

Of Common certain, Appendant, or Appurtenant. *Co. L.* 32. *a.*

And it ſhall be intended Common Appendant, if it does not appear to the contrary. *R. Jon.* 315.

Of Tithes. *Vide Co. L.* 32. *a.*

So a Wife ſhall be endowed of the chief Manſion, or Meſſuage of her Huſband. *Co. L.* 31. *b.*

Tho' it be a Caſtle: for *Mag. Charta*, 7. ſhall be underſtood only of a Caſtle for Defence of the Realm. *Co. L.* 31. *b.*

Tho' it be the Capital Seat, where her Huſband was a Baron of the Realm: for *Caput Baroniæ* is underſtood of the principal Seat of Feudal Baronies given by the King to be held for the Defence of the Realm. *R.* 1 *Sal.* 253. 3 *Lev.* 401. 5 *Mod.* 65. *Skin.* 592.

So ſhe ſhall be endowed of intire Tenements, tho' it cannot be by Metes and Bounds: As, of a Mill; and ſhe ſhall have the 3d Toll-diſh, or the whole Mill every 3d Month. *Co. L.* 32. *a.*

So, of a Villein; and ſhall have his Labour every 3d Day, Week, or Month. *Co. L.* 32. *a.*

Of the Profits of a Fair, or Office. *Co. L.* 32. *a.*

Of Stallage, a Dovecote, a Piſcary; and ſhall have the 3d Fiſh, or *tertium jactum retis. Co. L.* 32. *a.*

Of an Advowſon; and ſhall have the 3d Turn. *Co. L.* 32. *a.*

## (A. 9.) Of what, not.

But the Queen ſhall not be endowed of the Crown of *England.* 1 *Rol.* 676. *l.* 3.

So a Wife ſhall not be endowed of Common in Groſs uncertain. *Jon.* 315.

So, by the Common Law, a Wife ſhall not be endowed of Chattels, tho' by the Civil Law ſhe may. 1 *Rol.* 675. *l.* 40.

## (A. 10.) When Title to Dower commences.

To a Title to have Dower 3 Things are neceſſary: Marriage, Seiſin, and the Death of the Huſband. *Co. L.* 31. *a.* 32. *a.*

## (A. 11.) Aſſignment of Dower; Quarentine.

By the *St. Mag. Charta*, 9 *H.* 3. 7. *Vidua maneat in Capitali Meſſuagio Mariti ſui per* 40 *dies, infra quos Dos ei aſſignetur*: and this Term of 40 Days is called her *Quarentine. Co. L.* 32. *b.* 34. *b.* 2 *Inſt.* 16.

But by the ſame *Statute, Si Domus illa ſit Caſtrum, Domus competens provideatur in quâ poteſt morari donec Dos ei aſſignetur; & habeat rationabile Eſtoverium ſuum interim.*

And therefore, the Wife ſhall have Quarentine only for 40 Days. *Co. L.* 32. *b*

Tho' before the Conqueſt ſhe would have had it for a Year. *Co. L.* 32. *b.*

The Quarentine ſhall be allowed in the principal Meſſuage of the Huſband, of which ſhe is dowable. 2 *Inſt.* 17.

Tho' it be called a Caſtle; if it be not maintained for War, but for Habitation. *Co. L.* 32. *b.* 34. *b.* 2 *Inſt.* 17.

Tho' it be the principal Manſion of a Baron, or Peer of the Realm. *R.* 3 *Lev.* 401. 5 *Mod.* 65. 1 *Sal.* 253.

And the Wife during her Quarentine ſhall have Suſtenance *de bonis Viri.* 2 *Inſt.* 17.

And if ſhe be ouſted of her Quarentine, the Wife ſhall have a Writ to the Sheriff, which gives a Commiſſion to him to make Proceſs againſt the Defendant returnable in 2 or 3 Days, and put her into Poſſeſſion. *Co. L.* 34. *b.* 2 *Inſt.* 17.

But the 40 Days after the Death of the Huſband, allowed for Quarentine, are incluſive of the Day of his Death, and there are but 39 Days after. 2 *Inſt.* 17.

So the Wife ſhall loſe her Quarentine, if ſhe marries another. 2 *Inſt.* 17. *Co. L.* 32. *b.* 34. *b.*

So a Wife cannot kill the Oxen of the Huſband for her Suſtenance. *Vide* 2 *Inſt.* 17.

So the Wife ſhall not have her Quarentine in a Houſe which is a Caſtle maintained for Defence of the Realm. *Co. L.* 32. *b.* 34. *b.* 2 *Inſt.* 17.

Nor in that which is *Caput Baroniæ*, which uſually was a Caſtle. 2 *Inſt.* 17.

## (B) Dower by Cuſtom.

BY Cuſtom, a Woman may be endowed of a Moiety, the Whole, or but a 4th Part of the Lands, of which her Huſband was ſeiſed. *Lit. S.* 37. *Co. L.* 33. *b.* 21 *Ed.* 4. 53, 4. *Vide Copyhold*, (K. 2.)

So, by Cuſtom, a Woman may be endowed of the Profits of Mines of Tin, *&c.* *Dal.* 2.

## (C) Dower Ad oſtium Eccleſiæ.

SO a Man of full Age might endow his Wife *Ad oſtium Eccleſiæ, vel Monaſterii*, after Affiance of the Whole or Part of his Land; and there openly declare the Quantity and Certainty of the Land which ſhe ſhall have. *Lit. S.* 39.

And in ſuch Caſe the Wife ſhall enter after the Death of her Huſband, without the Aſſignment of any one. *Lit. S.* 39.

And ſuch Endowment ſhall be good without Deed: for he cannot make a Deed to his Wife. *Co. L.* 34. *a.*

*Vide Co. L.* 34. *b.* 35. *a.* 36. *a. &c.* *Lit. S.* 41, 42, *&c.*

## Dower Ex Aſſenſu Patris.

For Dower *Ex Aſſenſu Patris, Vide Lit. S.* 40, 41, 42, *&c.* *Co. L.* 35. *a.* 35. *b.* 36. *a.* 36. *b.* 37. *a*, *&c.*

## (D) Dower de la pluis Beale.

DOWER *de la pluis Beale* is, when the Husband dies having Lands, Part in *Chivalry* and Part in Socage, his Heir within the Age of 14 Years, by which the Lord enters as Guardian in *Chivalry* into the Lands held of him, and the Wife into the other Land as Guardian in Socage, and afterwards she brings Dower against the Guardian in *Chivalry*; he may plead this Matter, and pray, that she may be endowed of the most fair of the Lands in Socage; and Judgment shall be accordingly. *Lit. S.* 48, 49.

So, tho' the Lands in Socage be not sufficient for her whole Dower, she shall have it in them for so much, and the Residue only out of the Land held in *Chivalry*. *Semb. Co. L.* 39. *a.*

After such Judgment to recover *de la pluis Beale*, *&c.* the Wife may, in the Presence of her Neighbours, endow herself by Metes and Bounds of the fairest of the Lands in Socage. *Lit. S.* 49.

And she shall hold for her Life. *Co. L.* 39. *b.*

But the Heir, before Entry of the Guardian in *Chivalry*, cannot pray, that the Wife shall be endowed *de la pluis Beale*: for it is a Privilege allowed only for saving the Estate of the Guardian in *Chivalry*. *Lit. S.* 50. *Vide Co. L.* 39. *b.*

So such Endowment cannot be without the Judgment of a Court. *Lit. S.* 50.

## (E) Jointure.

### (E. 1.) When it shall be a Bar to Dower.

BY Common Law, a Jointure made to a Wife after or before Marriage, was not a Bar to her Dower: for a Title to a Freehold shall not be barred by a Collateral Satisfaction. *Co. L.* 36. *b.* *R.* 4 *Co.* 1.

But now, by the *St.* 27 *H.* 8. 10. where an Estate hath been or shall be made in Lands, Tenements, or Hereditaments, to any and his Wife and the Heirs of the Husband, or to them and the Heirs of their 2 Bodies, or of one of them, or to them for their Lives, or for the Life of the Wife, or to others to like Uses, for the Jointure of the Wife; such Jointress shall not have Dower in any other Lands which were her Husband's.

So in every Case, where an Estate is limited to the Wife for her Life, or for a greater Estate, solely or jointly with her Husband, which shall take Effect in Possession or Profit immediately upon the Death of the Husband, it shall be a good Jointure. *Co. L.* 36. *b.*

Tho' it be limited to the Wife solely for her Life, or to the Husband for Life, and afterwards to the Wife in Remainder (after the Death of her Husband) for Life: for the Cases mentioned in the Statute are only for Example. *R.* 4 *Co.* 2. *a.* *Dy.* 228.

Or, to Husband and Wife and the Heirs Males of their Bodies. 4 *Co.* 2. *b.* *R. Dy.* 96.

Or, to the Wife and her Heirs in Fee-simple. *R.* 4 *Co.* 3. *b.* *R. per* 3 *J.* 2 *cont. Dy.* 248. *a.*

So, tho' it be limited to the Wife with a Condition annexed: for if the Condition was unreasonable, it need not be accepted; and if it be accepted, it is the Wife's Fault if she breaks it. *R.* 4 *Co.* 2. *b.* *Semb.* 1 *Leo.* 311.

Tho' it be a Condition in Law; As, if the Limitation be *durante Viduitate*: for this is an Estate for her Life, if she pleases. 4 *Co.* 2. *b.*

So

So, tho' the Eſtate be limited to the Uſe of the Wife: which is executed by the Statute. *Mo.* 28.

Or, the Huſband, or his Father, makes a Feoffment upon Condition to enfeoff the Wife. *Mo.* 28.

So a Deviſe to a Wife for Life, in Tail, &c. if it be expreſſed for her Jointure, or in Satisfaction of her Dower, ſhall be a Bar of Dower. *R.* 4 *Co.* 4. *a.* *Co. L.* 36. *b.*

So an Eſtate limited to a Wife (otherwiſe than by Will) may be averred to be for her Jointure, if it has the Requiſites of a Jointure; tho' it be not ſo expreſſed. *R.* 4 *Co.* 3. *Vide Ow.* 33.

So a Deviſe, which has Words tantamount, tho' it is not expreſſed for a Jointure, ſhall be a Bar. *Lut.* 737.

So, if a Jointure be before Marriage, ſhe cannot waive it, and claim Dower. *R.* 4 *Co.* 3. *a.*

## (E. 2.) When not.

But by the *St.* 27 *H.* 8. 10. If a Woman ſhall have a Jointure made her after Marriage, unleſs by Act of Parliament; ſhe may refuſe her Jointure, and demand her Dower at Common Law.

Tho' before Marriage an Eſtate was limited to her in Part of her Jointure, and after Marriage another for her whole Jointure. *R.* 4 *Co.* 3. *a.*

What ſhall be a Waiver, *Vide in Baron and Feme*, (S. 4, &c.)

By the *St.* 27 *H.* 8. 10. If any Woman be lawfully evicted of her Jointure, or any Part of it by Entry, Action, or by Diſcontinuance of her Huſband without Fraud, ſhe ſhall be endowed of as much of her Huſband's Lands of which ſhe was dowable, as ſhe was evicted of.

So, if evicted for Part in the Life of the Huſband, ſhe ſhall be endowed for ſo much, tho' ſhe accepts the Reſidue of the Jointure. *R. Mo.* 717.

So, if Part was entailed, and the Iſſue entred, and was in Ward to the King. *R. Mo.* 721, 2.

But ſhe ſhall be endowed only for Life, tho' ſhe be evicted of an Eſtate-Tail, or in Fee. 4 *Co.* 3. *b.*

Nor ſhall ſhe be endowed, if ſhe joins with her Huſband in a Fine of her Jointure. *Co. L.* 36. *b.*

So it ſhall not be a Jointure to bar Dower, if the Eſtate limited to the Wife does not take Effect to her in Poſſeſſion, or Profit, immediately upon the Death of the Huſband: As, if it be limited to the Huſband for Life, afterwards to *B.* for Life, afterwards to the Wife for Life; tho' *B.* dies in the Life of the Huſband. *Co. L.* 36. *b.* *R.* 4 *Co.* 2. *b.*

Or, to *B.* for Life in Poſſeſſion, and afterwards to the Wife for Life. 4 *Co.* 2. *b.*

So, if it be to the Wife for the Life of another, or for 2 or 3 Lives, it is not a Jointure. *Co. L.* 36. *b.* 4 *Co.* 3. *a.*

Or, for a hundred, or a thouſand Years. *Co. L.* 36. *b.*

So, if it be limited to *A.* and his Heirs, in Truſt for the Wife for her Life; it is not a Jointure. *Co. L.* 36. *b.*

Or, by Bargain and Sale upon Truſt to make a Jointure. *Mo.* 28, 9.

So, if it be limited in Satisfaction of Part of her Dower, it ſhall not be a Jointure. *Co. L.* 36. *b.* 4 *Co.* 3. *a.*

So, if an Eſtate to Huſband and Wife and their Heirs upon Condition, be averred for a Jointure; the Settlement, without other Circumſtances, is not a Proof of it. *R.* 1 *Lev.* 311. *But ſee Cro.* 33. *which ſeems contra.*

So a Deviſe cannot be averred for a Jointure, if the Words of the Will do not import it. *R.* 4 *Co.* 4. *a.* *R. Lut.* 737.

When an Alienation of a Jointure ſhall be a Forfeiture, or not, *Vide in Forfeiture. Vide Diſcontinuance,* (A. 5, 6.)

## (F) How a Wife ſhall loſe her Dower.

### (F. 1.) By Attainder.

BY Common Law, the Wife ſhall loſe her Dower, if her Huſband was attainted of High, or Petit Treaſon. *Co. L.* 37. *a.* 41. *a. Vide Ante,* (A. 2.)

So, if he was attainted of a Felony, above Petty Larceny. *Co. L.* 37. *a.* 41. *a.*

And that, as well Dower *Ad oſtium Eccleſiæ, Ex aſſenſu Patris,* or by Cuſtom, as Dower at Common Law. *Co. L.* 37. *a.* 41. *a.*

And Dower, againſt the Feoffee of her Huſband before the Treaſon or Felony committed, as well as againſt the King, or Lord by Eſcheat. *Co. L.* 41. *a. R. per all the Judges, Dy.* 140. *b. R.* 1 *Leo.* 3. *Sav.* 54.

But a Wife ſhall not be barred of her Jointure, if her Huſband be attainted of Treaſon, or Felony. *Co. L.* 37. *a.*

So, by the *St.* 1 *Ed.* 6. 12. and 5 *Ed.* 6. 11. the Wife ſhall have Dower, tho' her Huſband be attainted for Murder, or other Felony. *Co. L.* 37. *a.* 41. *a. Vide Ante,* (A. 2.)

### (F. 2.) By Elopement.

By *St. W.* 2. 13 *Ed.* 1. 34. If a Wife willingly leave her Huſband, and go away and continue with her Adulterer, ſhe ſhall be barred for ever of Action to demand her Dower, if ſhe be convict thereupon, except that her Huſband willingly, and without Coertion of the Church, reconcile her, and ſuffer her to dwell with him. (*Vide Co. L.* 32. *a. b.* 2 *Inſt.* 435. 1 *Rol.* 680. *P.*)

## (G) Remedy for Dower.

### (G. 1.) Right of Dower.

A Writ of *Right of Dower* lies, when a Wife has Dower of Part in the ſame Vill: for then ſhe cannot have Dower *unde nihil habet* againſt the ſame Tenant. *Reg.* 3. *a. F. N. B.* 8. *C.*

But it does not lie, where a Wife loſes the Land, which ſhe holds in Dower, by Default: for by the *St. W.* 2. 4. ſhe ſhall have a *Quod ei deforceat*; and before, ſhe had no Remedy but by a Writ of *Diſceit*, if ſhe was not ſummoned. *F. N. B.* 8. *D.*

Or, if ſhe loſes in an Aſſiſe, or other Action; for ſhe has no Remedy but by Attaint. *F. N. B.* 8. *D.*

Nor in any Caſe, where ſhe ever had Poſſeſſion of her Dower by Aſſignment, or otherwiſe. *Q? F. N. B.* 8. *D. E.*

A Writ of Right of Dower lies of a 3d Part, or of a Moiety, according to the Uſage. *Reg.* 3. *b. F. N. B.* 8. *H.*

And ſhall be directed to the Heir, if he has a Court, or his Guardian. *Reg.* 3. *a. F. N. B.* 7. *E.* 8. *C. K.*

And

And if, by reaſon of his Poverty, he has not a Court; to the Lord of the Fee. *Reg.* 3. *a.*

Since the *St. Quia Emptores terrarum*, if the Huſband aliens the Whole in Fee, it ſhall be directed to the Feoffee. *F. N. B.* 7. *F.*

If he aliens the Whole in Tail, or for Life, it may be ſued in *C. B.* ſuggeſting, *quod Dominus remiſit Curiam:* for he in Reverſion has but a Seigniory in Groſs, and cannot hold a Court. *F. N. B.* 8. *A. B.*

And where the Lord cannot hold a Court, *C. B.* will proceed upon ſuch Writ *quia Dominus remiſit Curiam*, tho' the Aſſent of the Lord cannot be proved. *F. N. B.* 8. *B.*

Yet if the Lord has a Court, and a Writ be in *C. B. quia Dominus, &c.* a Prohibition lies to the Juſtices of *C. B.* *Q? F. N. B.* 8. *B.* *Vide Droit*, (C. 2.)

And if the Huſband has not aliened the Whole, the Writ ſhall be directed to the Heir, or his Guardian. *F. N. B.* 7. *F.* 8. *A.*

If the Heir will not do Right, the Demandant may remove the Plaint out of his Court by *Tolt* to the County, and out of the County by *Pone* to *C. B.* without any Cauſe in the Writ. *F. N. B.* 7. *E.* *Vide Droit*, (B. 5.)

So the Tenant, with Cauſe, may remove it out of the Court of the Heir or Lord to *C. B.* by *Recordare*, or out of the County by *Pone*. *F. N. B.* 7. *E.* *Vide Droit*, (B. 6.)

The Proceſs in the Court of the Heir is a Precept in Nature of a Summons, *Grand Cape*, and *Petit Cape*. *F. N. B.* 8. *F.*

After the Plea removed into *C. B.* the Proceſs ſhall be *Grand Cape* and *Petit Cape*. *F. N. B.* 8. *F.*

### (G. 2.) Dower *unde nihil habet.*

Dower *unde nihil habet* is a Writ of Right in its Nature; and lies in all Caſes, where a Woman has a Right to Dower, except where ſhe has Part from the ſame Tenant in the ſame Vill, where ſhe now demands it. *Vide F. N. B.* 8. *C.* 147. *E.* 148. *A, &c.*

## Pleading in Dower.

*Vide Pleader*, (2 Y. 1, &c.)

## Admeaſurement of Dower.

For Admeaſurement of Dower, *Vide* the *St. W.* 2. 7. *Co. L.* 39. *a.* 2 *Inſt.* 367, *&c.* *F. N. B.* 148. *F, &c.*

Concerning Dower in Equity, *Vide Chancery*, (3 E. 1, 2.)
*Vide* alſo *Copyhold*, (K. 2.)—*Waſt*, (F. 2.)

# DRAWER.

## Drawer of a Bill of Exchange.

*Vide Merchant*, (F. 4, 12.)

## Wine-Drawer.

*Vide London*, (K. 5.)

# DROIT.

## (A) Right to Land.

RIGHT is to the Poſſeſſion, or to the Property of Lands, or to both. *Co. L.* 266. *a.*

## (B) Writ of Right. Right Patent.

### (B. 1.) When it lies.

A Writ of Right is either properly ſo called, or ſuch in its Nature. *Co. L.* 158. *b.* *Vide Action,* (D. 2.)

A Writ of Right is the higheſt of all real Actions, and the laſt Remedy for the Recovery of Lands and Tenements. *Co. L.* 158. *b.* *F. N. B.* 1. *A.*

A Writ of Right properly ſo called, is either Patent, or Cloſe.

When it is directed to the Lord of whom the Lands are holden, it is Patent, to do Right in his Court. *F. N. B.* 1. *F.*

But it ſhall be Cloſe, 1. When it is for Lands *in Capite* by *Præcipe in Capite.* *Vide Poſt,* (C. 1.)

2. When brought in *C. B.* for Lands holden of another Lord, *quia Dominus remiſit Curiam.* *Vide Poſt,* (C. 2.)

But when in *London* for Lands there, it ſhall be Patent. *F. N. B.* 6. *B.* *Vide Poſt,* (D.)

3. When in *Antient Demeſne* for Lands which are *Antient Demeſne* it ſhall be Cloſe. *Vide Ancient Demeſne,* (G. 1, &c.)

A Writ of Right Patent lies for Lands and Tenements only by Tenant in Fee, againſt him who is Tenant of the Freehold. *F. N. B.* 1. *B. E.*

As, if Tenant in Fee dies ſeiſed, and a Stranger abates; the Heir may have Right Patent, or *Mort d'anceſtor.* *F. N. B.* 1. *C. D.*

Or, if a Man ſeiſed in Fee loſes by Default in a *Præcipe quod reddat*; he may afterwards have Right Patent. *F. N. B.* 1. *D.*

So, if he loſes by Verdict in a *Præcipe quod reddat.* *F. N. B.* 5. *M.*

Or, if the Demandant be barred in any other real Action, he may afterwards have a Writ of Right. *F. N. B.* 5. *N.*

So, if the Demandant be barred by the Statute of Limitations in all inferior Actions.

So, if he loſes by default in a Writ of Right before the *Miſe* joined, he may have a Writ of Right *de novo.* *F. N. B.* 5. *N.*

Right Patent lies of all Lands and Tenements; as, of a Houſe, Meadow, Piſcary, Rent, *&c.* *F. N. B.* 1. *L.* 2. *C.* 6. *A.*

Of a Paſſage acroſs a Water, and Paſture for ſo many Cattle certain. *F. N. B.* 1. *L.*

And of ſo many Acres *Jampnor' & Bruer'* is well, without ſaying ſo many Acres of each. 1 *Leo.* 169.

### (B. 2.) When not.

But it does not lie for Tenant for Life *F. N. B.* 1. *B.*

Or for Tenant in Tail, or *Frankmarriage.* *F. N. B.* 1. *B.*

Or by a Parſon, Vicar, Prebendary, &c. *F. N. B. 5. C.*

So it ought not to be brought of an Advowſon, or Common, &c. *F. N. B. 1. B.*

Nor of an Office; for an Aſſiſe does not lie of it by the Common Law, but a *Quod Permittat*. *R. 1 Leo. 169. 2 Leo. 36.*

Nor *de Pomario:* for it is not named in the Regiſter, and it is included in the Word, *Gardinum*. *1 Leo. 169.*

So it does not lie againſt him who has not a Freehold at leaſt: As, againſt Tenant for Years. *F. N. B. 1. E.*

Or againſt Tenant by Statute-Merchant, Staple, or *Elegit*. *F. N. B. 1. E.*

So, if the Demandant or Tenant be barred by Judgment after the *Miſe* joined in a Writ of Right, it ſhall be final; and he ſhall never have another Writ of Right. *F. N. B. 5. N.*

Tho' the Judgment be upon a Nonſuit, or Default. *F. N. B. 5. N.*

## (B. 3.) How ſued.

(B. 3.) To whom directed.

A Writ of Right Patent ſhall be always directed to the Lord of the Manor of whom the Lands are holden, or his Bailiff; and ſhall command him *quod Rectum teneat* for ſuch Land, &c. *F. N. B. 1. F.*

And it is in the Nature of a Commiſſion to him, to do Right in his Court. *F. N. B. 1. F.*

If Land be holden of another Perſon than the King, the Writ ſhall be directed to the Lord himſelf if he be in the Kingdom; otherwiſe to his Bailiff. *F. N. B. 1. G. H. Mo. 1.*

If it be holden of the King, as of an Honour, Manor, or in Burgage, it ſhall be directed to his Bailiff. *F. N. B. 1. I. Mo. 1.*

If it be holden of a Biſhop, Abbot, &c. after Election and before Conſecration, it ſhall be directed to his Bailiff. *F. N. B. 1. F. 2. E.*

So, if Land were in the King's Hands in the Time of the Vacation, by Reaſon of Ward, &c. or in the Hands of the Patentee of the Ward, &c. it ſhould be directed to the Bailiff of the Manor. *F. N. B. 2. A. E.*

So, if the Lord has no Court for the Poorneſs of his Manor, it ſhall be directed to the Lord Paramount. *F. N. B. 2. A.*

So, if the Lord refuſes to hold his Court, there ſhall be a Writ to him to do it; and upon that an *Alias*, *Pluries*, and Attachment. *F. N. B. 3. E.*

(B. 4.) In what Form it ſhall be.

A Writ of Right Patent expreſſes by what Services the Land is holden. *F. N. B. 1. I.*

So it ought to mention the ſeveral Particulars in the Order preſcribed by the Regiſter. *F. N. B. 2. C.*

A Writ may be ſued againſt divers Perſons together, tho' they hold ſeverally. *F. N. B. 2. D.*

The Writ ſhall be brought by the Demandant to the Steward of the Court, who makes an Entry, and returns it to him.

And the original Writ of Right Patent remains always with the Demandant, and not with the Steward of the Court, or the Sheriff. *F. N. B. 4. D.*

## (B. 5.) How removed.

(B. 5.) By *Tolt*.

The Plaintiff may remove Right Patent by *Tolt* into the County-Court, if it be delayed in the Lord's Court. *F. N. B. 3. F.*

So the Plaintiff may remove Right Patent out of the County-Court into *C. B.* by *Recordare*, or *Pone*. *F. N. B.* 4. *A. B. But Semb.* that it ſhall be by *Pone* only. *F. N. B.* 4. *C.*

And this, without Cauſe expreſſed in the Writ. *F. N. B.* 4. *B.*

But the Plaintiff cannot remove Right Patent out of the Lord's Court by *Recordare*, *per Saltum* into *C. B.* without having a *Tolt* to remove it firſt into the County-Court. *F. N. B.* 4. *A.*

So the Tenant cannot remove Right Patent by *Tolt* into the County-Court. *F. N. B.* 4. *A.*

(B. 6.) By *Recordare.*

So the Tenant may remove Right Patent, for Cauſe, directly out of the Lord's Court into *C. B.* by *Recordare*. *F. N. B.* 4. *A. C.*

As, if the Bailiff of the Court favours the Demandant. *F. N. B.* 4. *A. B.*

So, if the Tenant pleads a foreign Plea, or Baſtardy. *F. N. B.* 4. *B.*

Or joins the *Miſe* upon the grand Aſſiſe. *F. N. B.* 4. *B.*

And if the Lord, or Sheriff will proceed after ſuch Plea, the Tenant may have a Prohibition; and upon that an *Alias*, *Pluries*, and Attachment. *F. N. B.* 4. *E.*

So the Tenant may remove Right Patent out of the County-Court, by *Pone* for Cauſe. *F. N. B.* 4. *D.*

## (C) Right Cloſe.

### (C. 1.) *Præcipe in Capite.*

SO, if Land be holden of the King *in Capite* the Writ of Right ſhall be Cloſe, and returned into *C. B.* *F. N. B.* 5. *G.*

And this is of as high a Nature, and lies only by Tenant in Fee, in the ſame Caſes as Right Patent. *F. N. B.* 5. *G.*

But if a *Præcipe in Capite* be ſued in *C. B.* when the Land is not holden of the King, the Lord may have a Writ out of *Chancery* to ſurceaſe the Suit, if it appears that the Tenure is of another Perſon than the King. *F. N. B.* 3. *D.*

Or, a Writ to the Juſtices of *C. B.* to ſurceaſe. *F. N. B.* 5. *B.*

Yet the Tenant himſelf cannot plead, that the Tenure is not of the King; but only ſhall take it by Proteſtation. *F. N. B.* 5. *L.*

As to Right Cloſe in *Antient Demeſne*, *Vide Ancient Demeſne*, (G. 1, &c.)

### (C. 2.) *Quia Dominus remiſit Curiam.*

(C. 2.) When it lies.

So, by Licence of the Lord, a Man may ſue a Writ of Right in *C. B.* and then the Writ ſhall be Cloſe, and directed to the Sheriff. *F. N. B.* 2. *F.*

And ſuch Licence may be given before, or after the Writ purchaſed. *F. N. B.* 2. *F.*

And the Letter of Licence ſhall be certified into *Chancery*. *F. N. B.* 3. *A.*

So a Man may ſue a Writ of Right returnable in *C. B.* with this Clauſe after the *Teſte*, *Quia Dominus remiſit Curiam*, tho' no Licence be given; for it is not traverſable: And this is the proper Original in a Writ of Right in *C. B.* *F. N. B.* 2. *F.* 3. *B.*

So, if this Clauſe be omitted, where Licence is afterwards given, it is ſufficient. *F. N. B.* 2. *F.*

So, if this Clauſe is inſerted, it is well, tho' the Lord never remitted his Court. *F. N. B.* 3. *B.*

Tho'

Tho' the Land was holden of him in Groſs, and the Lord had not a Court: for then there is the more Reaſon that the Writ ſhould be ſued in *C. B. F. N. B.* 3. *C.*

But this cannot be where the Land lies in *Durham*. *Semb.* 1 *Bul.* 160.

(C. 3.) How it ſhall be proceeded upon.

After the Original ſued in Right *quia Dominus remiſit Curiam*, the Tenant ought to be ſummoned. *Vide Booth of Real Actions* 92.

If the Suit was commenced in the Lord's Court, it ought to be removed by *Tolt, &c.* 1 *Semb. Bul.* 159, 160.

If the Tenant be ſummoned, the Sheriff returns his Writ.

At the 4th Day after the Day of the Return, the Tenant may be eſſoined. *Vide Booth of Real Actions* 92.

And thereupon the Demandant ought to adjourn the Eſſoin for 15 Days; otherwiſe he ſhall be nonſuited. *Vide Booth of Real Actions* 92.

If the Tenant does not appear at the Return of the Summons, nor be eſſoined, a *Grand Cape* iſſues againſt him. *Vide Booth of Real Actions* 92.

If he does not appear at the Return of the *Grand Cape*, Judgment final ſhall be againſt him. *Vide Booth of Real Actions* 92.

So, if he does not appear at the Day given by the Eſſoin, tho' there be no *Grand Cape*. *Vide Booth of Real Actions* 92.

If the Tenant appears at the Day of the Summons, or at the Day given by the Eſſoin, he may have a Writ of View. *Vide Booth of Real Actions* 92, 3.

And at the Return of the Writ of View, he may have another Eſſoin. *Vide Booth of Real Actions* 93.

And at the Day of Return of the View, or the Day by the Eſſoin, he may imparle. *Vide Booth of Real Actions* 93.

(C. 4.) The Count, *&c.*

If Land be holden of the King *in Capite*, in a Writ of Right *quia Dominus remiſit Curiam, &c.* after Appearance, the Demandant ought to count.

The Count may alledge *Eſplees* in the Demandant, or his Anceſtor. *F. N. B.* 5. *M.* (*Vide F. N. B.* 5. *D.*)

If the Writ be upon his own Seiſin, it ought to be within 30 Years. 1 *Bul.* 162.

If upon the Seiſin of his Anceſtor, within 60 Years is ſufficient. 1 *Bul.* 162.

After the Count, the Tenant may demand a View. *Vide Booth of Real Actions* 94.

And after the View, he may imparle. *Vide Booth of Real Actions* 94.

(C. 5.) The Plea in Right *quia Dominus remiſit Curiam. Miſe* upon the mere Right.

If the Tenant pleads to the Count, he ſhall plead to be tried by Battle, by the Grand Aſſiſe, or by a Common Jury. *Vide Booth of Real Actions* 95.

If he joins the *Miſe* upon the mere Right, he may defend in Battle, *per Corpus liberi hominis ſui*. *Vide Battle*, (A. 2.)

Or may put himſelf on the Grand Aſſiſe. *Vide Battle*, (A. 3.)

If the *Miſe* be put on the Grand Aſſiſe, it ſhall be joined without Reply by the Demandant. *Vide Booth of Real Actions* 96.

But the Demandant may afterwards imparle before Proceſs for the Grand Aſſiſe. *Vide Booth of Real Actions* 96.

And if the Tenant does not appear at the Day given by the Imparlance, Judgment ſhall be againſt him, as upon a Departure in Deſpite of the Court. *Vide Poſt*, (C. 6.) *Vide Booth of Real Actions* 96.

After the Recognitors ſworn, (the Manner of which *Vide in Battle*, (A. 3.) the Tenant ſhall give his Evidence firſt: for the Affirmative is upon him. 3 *Leo.* 162.

(C. 6.) Judgment.

If the Demandant after the *Miſe* joined upon the mere Right, makes Default, Judgment final ſhall be againſt him, *viz. quod Tenens teneat terram illam ſibi & hæredibus in pace verſus Petentem & hæredes ſuos in perpetuum. Co. L.* 295. *b.*

So, if the Demandant confeſſes the Action, or be nonſuited. *Co. L.* 295. *b.*

So, if the Verdict of the Grand Aſſiſe be againſt him. *Co. L.* 295. *b.*

Tho' the Verdict be given upon a collateral Point, and not upon the Right. *Co. L.* 295. *b.*

Judgment in a Writ of Right was final and peremptory to all Strangers (as well as Parties and Privies) within the Realm, and out of Priſon, diſcovert, and of ſound Memory, and full Age, if they did not enter, or ſue an Action and make Claim within a Year and a Day. *Pl. Com.* 357. *a. Co. L.* 254. *b.* 262.

And this, in all Caſes where Judgment final is given, tho' by Default, *&c. Pl. Com.* 357. *b.*

But if a Default be after an Imparlance to another Term, Judgment final ſhall not be given before a *Petit Cape* awarded. *R.* 1 *Bul.* 160.

## (D) Right Patent in London.

SO a Writ of Right Patent lies in *London* by Tenant in Fee, of Lands or Tenements in *London. F. N. B.* 6. *B.*

And it ſhall be directed to the Mayor and Sheriffs of *London. F. N. B.* 6. *C.*

And it lies in the ſame Caſes, and the Proceedings upon it ſhall be in the ſame Manner as upon other Writs of Right Patent; without making Proteſtation to ſue as in an Action at Common Law, as it ſhall be upon a Writ of Right Cloſe. *F. N. B.* 6. *B. G.* 7. *A.*

## (E) Writ in Nature of a Writ of Right.

### (E. 1.) The ſeveral Species of it.

A Writ in the Nature of a Writ of Right lies by a Lord againſt his Tenant or another, for Recovery of his Services; or by the Tenant againſt his Lord, where Services are encroached; or by a particular Tenant for Recovery of his Right. *Vide Action*, (D. 2.)

If the Tenant diſclaims the Tenure the Lord ſhall have a Writ of Right upon the Diſclaimer, for the Land. *Vide Poſt*, (F.)

If he refuſes his Rent, or Services, the Lord ſhall have a Writ *de Conſuetudinibus & Servitiis. Vide Poſt*, (G.)

If he ceaſes for 2 Years, and has not a Diſtreſs, by *St. W.* 2. 21. the Lord ſhall have a *Ceſſavit. Vide Ceſſavit.*

If a Villein flies out of his Manor, he ſhall have a *Nativo habendo. Vide Villenage*, (C. 1, 2.)

If any, bound by Tenure or Preſcription, refuſes to grind at his Mill, he ſhall have a *Secta ad Molendinum. Vide Poſt*, (H.)

And if, upon the Death of his Tenant, a Stranger ſeiſes the Body or Land of the Heir, the Lord ſhall have a Writ of Right of Ward. *Vide Gardian*, (H. 1.)

If his Tenant dies without Heir, he ſhall have a Writ of Eſcheat. *Vide Eſcheat*, (B. 1, 2.)

If

If the Lord encroaches Services, the Tenant ſhall have a *Ne injuſte vexes*. *Vide Poſt*, (I.)

If the Lord *paramount* diſtrains the Tenant *paravail*, he ſhall have a Writ of *Meſne*. *Vide Poſt*, (K.)

So, if a Man claims Common in Land, the Owner who has the Fee, ſhall have a Writ of *Quo Jure*. *Vide Quo Jure*.

So, if he be diſturbed in his Common, he ſhall have a *Quod Permittat*. *Vide Quod Permittat.—Common*, (I.)

If Tenants of Lands in ſeveral adjoining Vills do not know the Metes or Diviſions, one may have againſt the other a Writ *de Rationabilibus Diviſis*. *Vide Poſt*, (L.)

If a Parſon, Vicar, *&c.* be denied the Right of his Church, he ſhall have a *Juris Utrum*. *Vide Quare Impedit*, (E.)

If a Wife be denied her Dower, ſhe ſhall have Dower *unde nihil habet*. *Vide Dower*, (G. 1, 2.)

If Tenant in Tail be diſcontinued, he ſhall have a *Formedon in Deſcender*, *Reverter*, or *Remainder*.

## (F) Right upon a Diſclaimer.

IF a Tenant diſclaims upon Record to hold Land of his Lord; the Lord thereupon may have a Writ of Right for Recovery of the Land. *Vide Abatement*, (F. 15.)

As, in *Replevin*, if the Defendant avows for Rents and Services, and the Tenant diſclaims the Tenure; the Lord loſes the Services, but ſhall have a Writ of Right for the Land. *Vide Booth of Real Actions* 133.

And this Writ of Right ſhall be Patent, and ſued in the Court of the Manor.

Or may be removed by *Tolt* into the County Court, and by *Pone* to *C. B.* *Vide Booth of Real Actions* 133.

But if the Lord accepts his Rent from the Tenant after the Diſclaimer, it ſhall be a Bar to a Writ of Right upon the Diſclaimer. 3 *Leo.* 271, 2.

But a Man ſeiſed *in auter Droit* cannot diſclaim: As, ſeiſed in Right of his Wife, or in Right of his Church, *&c.* *Vide Co. L.* 103.

Nor Tenant for Life or Years, who has not a Fee.

*Vide Diſclaimer*.

## (G) Writ of Cuſtoms and Services.

SO, if a Tenant deforces his Lord of Rent, or Services, which he ought to have from him, the Lord ſhall have a Writ of Cuſtoms and Services. *F. N. B.* 151. *C.*

And this Writ is a Writ of Right in its Nature, and may be ſued before the Sheriff by *Juſticies*, or in *C. B.* *F. N. B.* 151. *B.* *Vide County*, (C. 5.)

If it be ſued returnable in *C. B.* it is Right Cloſe, and not Patent. *F. N. B.* 151. *B.*

And it may be brought by Tenant in Fee, in Tail, or for Life. *F. N. B.* 151. *B.*

And againſt ſeveral Tenants together. *F. N. B.* 151. *F.*

If it be by the Lord upon his own Seiſin, it ought to be in the *Debet & Solet*. *F. N. B.* 151. *G. I.*

And ſhall make Mention of the Services and Arrears. *F. N. B.* 151. *D.*

So, if it be upon the Seiſin of his Anceſtor, it ſhall be in the *Debet* only, and omit the Word *Arreragiis*. *F. N. B.* 151. *D. G. I.*

If the Lord claims Homage, it ought to be expreſly mentioned in the Writ. *F. N. B.* 151. *L.*

In this Writ the Tenant in Fee ſhall join the *Miſe*, tho' the Lord has not a Fee, but a Tail, or only for Life: for the Weakneſs of his Eſtate ſhall not prejudice the Tenant. *F. N. B.* 151. *N.*

So, if the Tenant has only for Life, he may pray in Aid of him in Remainder, who both may join the *Miſe* with the Demandant. *F. N. B.* 151. *N.*

What Remedy the Lord ſhall have, if the Tenant ceaſes the Payment of his Services, *Vide in Ceſſavit.*

What Remedy for a Villein who flies out of his Manor, *Vide in Villenage*, (C. 1, 2.)

## (H) Secta ad Molendinum.

SO, if a Tenant or other Perſon bound by Preſcription to grind his Corn at the Mill of the Lord, withdraws his Suit, the Lord may have *Secta ad Molendinum*. *F. N. B.* 122. *M.*

And it ſhall be ſued by *Juſticies* in the County-Court, or in *C. B.* *F. N. B.* 123. *A.* *Vide County*, (C. 5.)

And it may be brought by Tenant in Fee, in Tail, or for Life. *F. N. B.* 123. *B.*

If it be by Tenant in Fee, it ſhall be in the mere Right. *F. N. B.* 123.

If by Tenant in Tail, or for Life, it may be in the *Debet & Solet*. *F. N. B.* 123. *B.*

And it lies, when a Tenant is bound by Tenure to do Suit at a Mill, tho' the Lord may diſtrain for it. *F. N. B.* 122. *M.*

Or when any Perſon is bound by Preſcription to do Suit in reſpect of his Reſidence in ſuch a Precinct: As, the Villeins of a Stranger. *F. N. B.* 122. *M.*

So the Lord may have *Sectam ad Furnum, Thorale, &c.* *F. N. B.* 123. *B.*

The Proceſs ſhall be Summons, Attachment, and *Diſtringas*. *F. N. B.* 123. *D.*

If the Defendant appears, he may have a View of the Land, or of the Mill. *F. N. B.* 123. *C.*

If after Appearance, he makes Default, there ſhall be a *Diſtringas ad Judicium audiendum*; and Judgment, if he does not ſave his Default. *F. N. B.* 123. *D.*

After Appearance, the Demandant ſhall count upon Tenure, or Preſcription. *F. N. B.* 123. *E.*

To the Count, the Tenant may plead, *Nient ſeiſie, &c. niſi ex voluntate. Vide Booth of Real Actions* 138.

But, *hors de ſon fee*, is not a good Plea. *Vide Booth of Real Actions* 139.

## (I) Ne injuſte vexes.

THE Writ of *Ne injuſte vexes* ſhall be Patent, and is a Writ of Right in its Nature, founded upon *St. M. Ch.* 10. *quod Nullus diſtringatur ad faciend' majus Servitium quam debetur*: And therefore, it lies where the Lord has obtained more Service than is due, by the Payment of the Tenant without Coercion:

Coercion: For, if the Lord diſtrains for this Surplus of Rent or Service, the Tenant ſhall not avoid by Bar to the Avowry, but he ought to have this Writ, which commands the Lord, *Ne injuſte vexes vel vexari permittas B. de libero Tenemento ſuo quod de te tenet, nec inde ab eo exigas, &c. Conſuetudines vel Servitia quæ nec debet nec Solet, &c.* *F. N. B.* 10. *C.*

And it lies only, where the Tenant and his Anceſtors held of the Lord and his Anceſtors. *F. N. B.* 10. *G.*

The Proceſs is a Prohibition, Attachment, and *Diſtringas* againſt the Lord. *F. N. B.* 10. *D.*

The Writ, which is prohibitory, has a Clauſe *quod niſi feceris, Vic. L. fieri faciat, &c.* *F. N. B.* 10. *D.*

And therefore, if the Lord, after a Prohibition delivered, diſtrains for more Rent or Service than he ought, there ſhall be an Attachment returnable in *B. R.* or *C. B.* and the Tenant ſhall count there, and the Lord ſhall make his Defence, *&c.* *F. N. B.* 10. *H.*

But where the Encroachment is not of Rent, but of other Service, as Homage, Eſcuage, *&c.* the Tenant may avoid it upon the Avowry, by traverſing the Tenure; or may ſue a *Ne injuſte vexes.* *F. N. B.* 10. *H.*

## (K) Writ of Meſne.

A Writ of *Meſne* lies, where there are Lord, *Meſne*, and Tenant, and the Tenant *Paravail* is diſtrained by the *Meſne*, and by the Lord *Paramount*; he ſhall have this Writ, which is *Viſcontiel*, againſt the *Meſne*, and ſhall recover his Damages, and compel him to pay his Services. *F. N. B.* 136. *Vide County*, (C. 5.)

## (L) Writ de Rationabilibus Diviſis.

THE Writ *de Rationabilibus Diviſis* is a Writ of Right in its Nature, which lies by him who has Land in a Vill or Hamlet, againſt him who has Land near him in another, to aſcertain the Limits of the Vills, and by Conſequence of the Lands which were not before known. *F. N. B.* 128. *L. N.*

And it lies by Tenant in Fee againſt Tenant for Life. *F. N. B.* 128. *O.*

So, by Tenants in Common of one Vill jointly againſt the Tenant of the other. *F. N. B.* 129. *A.*

So, againſt ſeveral Tenants which have Lands in another Vill in Severalty, or in Common. *F. N. B.* 129. *E.*

But it does not lie by Tenant in Tail, or for Life. *F. N. B.* 129. *C.*

Nor by a Parſon of a Church. *F. N. B.* 129. *C.*

Nor by one Joint-tenant, or Parcener, without his Companion: for Joint-tenancy, *&c.* is a good Plea. *F. N. B.* 129. *D.*

The Writ is *Viſcontiel*, in which the Plaintiff ſhall make a Plaint in the Nature of a Count, before the Sheriff, who by Precept ſhall warn the Defendant, and then the Plaintiff ſhall count and the Defendant ſhall anſwer in the County-Court; and if he does not deny, the Sheriff ſhall make Diviſion by Metes and Bounds. *F. N. B.* 128. *P.* *Vide County*, (C. 5.)

Or the Defendant may remove it for Cauſe. *F. N. B.* 128. *Q.*

So, if the Defendant joins the Miſe upon the mere Right, and puts himſelf upon the Grand Aſſiſe, the Plaintiff ought to remove it. *F. N. B.* 128. *Q.*

And then the Plaintiff ſhall count in *C. B.* and the Defendant may join the *Miſe* upon the Grand Aſſiſe, or Battle. *F. N. B.* 128. *R.*

And Summons and Severance, and View ſhall be allowed. *F. N. B.* 129. *C.*

If Tenants in Common join, they ſhall make Title and alledge the *Eſplees* ſeverally; and the Defendant ſhall make Defence againſt them ſeverally. *F. N. B.* 129. *A. B.*

## (M) Curia Claudenda.

### (M. 1.) When it lies.

THE Writ *de Curiâ Claudendâ* lies by a Tenant of a Freehold againſt another Tenant of a Freehold of Land adjoining, who will not incloſe his Soil againſt him as he ought. *F. N. B.* 127. *H.*

And it lies by *Juſticies* in the County-Court, or in *C. B.* *F. N. B.* 127. *G. H.* *Vide County*, (C. 5.)

Or it may be removed out of the County-Court into *C. B.* by the Defendant for Cauſe, or by the Plaintiff without Cauſe. *F. N. B.* 127. *I.*

The Proceſs ſhall be Summons, Attachment, and *Diſtringas*. *F. N. B.* 128. *D.*

If the Defendant appears, the Plaintiff in his Count ſhall ſhew the Certainty of his Land, and of the adjoining Land of the Defendant. *F. N. B.* 128. *E.*

And ought to alledge, that the Defendant ought to incloſe by Preſcription, *&c.* *F. N. B.* 128. *E.*

If the Defendant makes Default after Appearance, a *Diſtringas* goes inſtead of a *Petit Cape*. *F. N. B.* 128. *D.*

And if he makes Default at the Return of it, a Writ of Enquiry goes for Damages, and a *Diſtringas* to make the Reparation. *F. N. B.* 128. *D.*

And it lies for not incloſing Land in an open Field, as well as for not incloſing a Curtilage, Garden, *&c.* *R. Mo.* 32.

It lies by the Vendee, where the Vendor ſells 2 Cloſes adjoining to another not ſevered, and does not make an Incloſure. *Per* 2 *J.* 2 *cont. Mo.* 775.

But *Curiâ Claudendâ* does not lie by Tenant for Years, or any other who has not a Freehold. *F. N. B.* 128. *B.* *Dy.* 38. *b.*

Nor by a Commoner. *F. N. B.* 128. *C.*

Nor againſt any, if his Land does not adjoin to the Plaintiff's Land. *F. N. B.* 128. *B.*

And therefore the Defendant to a *Curiâ Claudendâ* may plead, Non-tenure.

Or may Traverſe the Preſcription.

When an Action on the Caſe lies for not incloſing, *Vide in Action upon the Caſe for Negligence*, (A. 3.)

### (M. 2.) Who ſhall be bound to incloſe.

A Man may be bound by Preſcription to incloſe his Land againſt another.

So, if the Owner of 200 Acres in a Common Moor enfeoffs *B.* of 50 Acres, *B.* ought to incloſe at his Peril, to prevent Damage by his Cattle to the other 150 Acres: For if his Cattle eſcape thither, they may be diſtrained *Damage-feaſant*. *R. Dy.* 372. *b.*

So the Owner of the 150 Acres ought to prevent his Cattle from doing Damage to the 50 Acres, at his Peril. *Dy.* 372. *b.*

# DRUNKENNESS.

*Vide Juſtices of Peace*, (B. 28.)

# DUEL.

*Vide Battle*, (B.)

# DUKE.

*Vide Dignity*, (B. 2.)

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# DUM FUIT INFRA ÆTATEM.

## (A) Dum fuit infra Aetatem.

### The Nature of Writs of Entry.

ALL Writs of Entry into Lands or Tenements ſhew by what Means the Tenant entred, and what Cauſe the Demandant has to demand the Poſſeſſion. *Vide Booth of Real Actions* 172. *Vide Enfant* (C. 4.)

Writs of Entry are founded upon the Entry of the Tenant after an Alienation, Diſſeiſin, or Intruſion. *Vide Booth of Real Actions* 172, 173, 174.

A Writ of Entry lies upon an Alienation by a Perſon incapable: As, a *Dum fuit infra Ætatem*, upon an Alienation by an Infant. *Vide Enfant*, (C. 4.)

*Dum non fuit Compos Mentis*, upon an Alienation by an Ideot, *Non compos, &c. Vide Ideot*, (D. 5.) *Vide Poſt*, (B.)

Or upon an Alienation by a particular Tenant: As, after his Death there lies a Writ of Entry *ad Communem Legem. Vide F. N. B.* 207. *G. Vide Poſt*, (C.)

And by the *St.* of *Glo.* 7. a Writ of Entry *in Caſu proviſo* lies upon an Alienation by Tenant in Dower, in her Life-time. *Vide F. N. B.* 205. *M. Vide Poſt*, (D.)

And by the *St. W.* 2. 24. A Writ of Entry *in Conſimili Caſu*, upon an Alienation by any other particular Tenant. *Vide F. N. B.* 207. *D. Vide Poſt*, (E.)

Or upon an Alienation by a Huſband ſeiſed in Right of his Wife: As, a *Cui in Vitâ* by the Wife herſelf. *Vide Baron and Feme*, (I. 3.)

*Sur cui in Vita* by the Heir of the Wife. *Vide F. N. B.* 193. *A.*

*Cui ante Divortium*, and *Sur cui ante Divortium*, if Huſband and Wife are divorced. *Vide F. N. B.* 204. *F. Vide Poſt*, (G.)

A Writ of Entry lies in the Nature of an Aſſiſe, or in the *Quibus*, upon a Diſſeiſin to the Demandant himſelf. *Vide F. N. B.* 191. *C. Vide Poſt*, (H.)

If the Diſſeiſin was to his Anceſtor, or the Tenant claims by the Diſſeiſor, it ſhall be a Writ of Entry in the *Per*. *Vide F. N. B.* 191. *D.*

In the *Per* and *Cui*, if the Tenant claims by the Diſſeiſor in the 2d Degree. *Vide F. N. B.* 191. *D.*

And if he claims after all the Degrees, it ſhall be a Writ of Entry in the *Poſt*. *Vide Booth of Real Actions* 173. *F. N. B.* 191. *C.*

So a Writ of Entry lies upon an Intruſion after the Death of a particular Tenant. *Vide Booth of Real Actions* 173. *F. N. B.* 203. *E.*

*Ad Terminum qui præteriit*, if the particular Tenant detains the Land after his Term ended. *Vide F. N. B.* 201. *D.*

And *Cauſâ Matrimonii prælocuti*, where a Man detains Lands given to him by a Woman, upon Proſpect of Marriage, which afterwards does not take Effect. *Vide F. N. B.* 205. *A.*

## (B) Dum non fuit Compos Mentis.

THE Writ *Dum non fuit Compos Mentis* lies by the Heir of him, who not being of ſound Memory, aliens in Fee, in Tail, for Life, or for Years. *F. N. B.* 202. *C. F.*

The Proceſs ſhall be Summons, *Grand Cape*, and *Petit Cape*. *F. N. B.* 203. *D.*

But it does not lie by the Iſſue in Tail; for he ſhall have a *Formedon*.

## (C) Writ of Entry ad Communem Legem.

A Writ of Entry *ad Communem Legem*, lies by the Heir, or him in Reverſion ſeiſed in Fee, if Tenant by the Curteſy, in Dower, or for Life, aliens in Fee, in Tail, or for Life. *F. N. B.* 207. *G.*

## (D) Writ of Entry in Caſu Proviſo.

SO by the *St. of Glo.* 7. The Heir, or he in Reverſion ſhall have a Writ of Entry immediately, if Tenant in Dower, or for Life, aliens in Fee, or for Life: For tho' upon ſuch Alienation in Fee the Heir, or he in Remainder might enter by the Common Law, yet if the Entry was tolled by the Death of the Alienee and a Diſcent, he had not a Writ of Entry *ad Communem Legem* till the Death of the Alienor, and then the Heir frequently was barred by the Warranty of his Anceſtor; wherefore this Writ was provided called a Writ of Entry *in Caſu Proviſo*. 2 *Inſt.* 309. *F. N. B.* 205. *M.*

## (E) Writ of Entry in Conſimili Caſu.

SO by the *St. W.* 2. 24. *De Cætero, cum in uno Caſu conceditur Breve, in Conſimili Caſu, ſimili Remedio indigente, ſicut prius fiat Breve.*

And upon this Statute if Tenant by Curteſy aliens in Fee, in Tail, or for Life, or Tenant for Life, or *pur auter vie* aliens, *&c.* he who has the Eſtate in Reverſion in Fee, in Tail, or for Life ſhall have a Writ of Entry *in Conſimili Caſu*; tho' he had no Remedy by the *St. of Glo.* 7. *F. N. B.* 206. *F.* 2 *Inſt.* 405.

### (F) Cui in Vita.

For *Cui in Vitâ, Vide Baron and Feme,* (I. 3.)

### (G) Cui ante Divortium.

SO, if the Huſband aliens the Land of his Wife, and afterwards they are divorced, ſhe ſhall have a *Cui ante Divortium* againſt the Alienee. *Vide F. N. B.* 204. *F.*

So, ſince the *St.* 32 *H.* 8. 28. which makes the Alienation by the Huſband void: for the Entry of the Wife is preſerved only after the Death of the Huſband. *Per Dy. Mo.* 58.

### (H) Writ of Entry in the Quibus, or in Nature of an Aſſiſe.

A Writ of *Quibus* lies, inſtead of an Aſſiſe, by Tenant in Fee, or his Heir, if he or his Anceſtor be diſſeiſed of Lands, or Tenements, Rent, or Office, *&c.* *F. N. B.* 191. *C.* *Vide Aſſiſe.*

## DUM NON FUIT COMPOS MENTIS.

*Vide Dum fuit infra Ætatem,* (B.)

## DURESS.

*Vide Juſtices,* (S. 1.)—*Pleader,* (2 W. 19.)

## DUTCHY.

*Vide Franchiſes,* (D. 3.)—*Patent,* (C. 4.)

# E A R L.

*Vide Dignity*, (B. 4.)

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# ECCLESIASTICAL PERSONS.

## (A) The King.

THE King is *Perſona ſacra*; and therefore he may conſtitute and reſtrain Eccleſiaſtical Juriſdiction. *Vide Prærogative*, (D. 9.)—*Prohibition.*

May diſpenſe with the Eccleſiaſtical Laws. *Vide Prærogative*, (D. 11, 17, &c.)

May inflict Eccleſiaſtical Cenſures. *Vide Prærogative*, (D. 12, 21, 22.)

May make an Appropriation without the Biſhop, where he himſelf is Patron; and with the Conſent of the Patron only, where a Subject is Patron.

May take a Reſignation from a Dean of his Deanery, as well as the Biſhop: for he is Supream Ordinary.

## (B) Perſons Regular.

### (B. 1.) The Pope.

(B. 1.) What Authority was allowed to the Pope.

ALL Eccleſiaſtical Perſons are Regular, or Secular. *Co. L.* 93. *b.* Regulars are thoſe who have vowed Obedience, Chaſtity, and Poverty. *Co. L.* 93. *b.*

The Head of theſe Orders was the Pope.

By the Ignorance and Sufferance of ſuperſtitious Times, the Pope antiently had the Reputation of Supream Head of the *Engliſh* Church. *Hob.* 146, 7.

From him all the Power of Eccleſiaſtical Perſons was eſteemed to be derived. *Hob.* 147.

He created and conſecrated Biſhops.

And ſuch Creation by the Pope made one a Biſhop *de facto*, and capable to take the King's Confirmation. *Pal.* 346.

But in Truth all the Authority of the Pope was by Uſurpation, and void. *Hob.* 146. *Vide Popery.*

And therefore, where the Pope by his Authority made a Proviſion for Benefices, it was always diſallowed. *Vide Proviſor.*

So the Pope could never make a Corporation. *Jon.* 184.

Nor had Juriſdiction within the Realm. 4 *Inſt.* 321.

Yet ſome Acts of the Pope had the Semblance and Allowance of Right, and ſuch Authority was given to the Archbiſhop by the *St.* 25 *H.* 8. 21. *Vide Prærogative*, (D. 20.)

(B. 2.) An

### (B. 2.) An Abbot, Prior, Monk, &c.

(B. 2.) How profeſſed.

All Regulars were entred in ſome Houſe of Religion, as an Abbey, Priory, Monaſtery, &c. and there profeſſed.

A Man was entred into Religion, by his Admittance into a Houſe of Religion. *Co. L.* 132. *a.*

But he was not profeſſed till the Year of Probation expired, when he had taken the Habit of his Order, and vowed perpetual Obedience, Chaſtity, and Poverty. *Co. L.* 132. *a.*

(B. 3.) The Diverſity of the Orders.

There are ſeveral Orders of Houſes of Religion.

There were four Orders of Friars; as, *Friars Minors*, *Carmelites*, *Auguſtines*, and *Friars Preachers*. *Co. L.* 152. *a.*

And the *Friars Minors* comprehend the *Franciſcans*, *Capuchins*, and *Obſervants*. *Co. L.* 132. *a.* 136. *a.*

*Vide Monaſtery.*

(B. 4.) The Head of a Convent.

The Head of the Convent was the Abbot, or Prior.

Who ought to be choſen by the Convent. 2 *Rol.* 102.

(B. 5.) The Convent.

The Body of the Convent conſiſted of Monks, Canons, Friars, or Nuns. *Co. L.* 136. *a.*

## (C) Perſons Secular.

### (C. 1.) Archbiſhop.

How elected, *Vide Poſt*, (C. 2.)

THERE are within the Kingdom only the two Archbiſhops, of the Provinces of *Canterbury*, and *York*. *Co. L.* 94. *a.*

The Archbiſhop of *Canterbury* has the Stile of *Metropolitan, and Primate of all England*. *Co. L.* 94. *a.*

The Archbiſhop of *York*, *Metropolitan, and Primate of England.*

*York* has within his Province, *Durham*, *Carliſle*, *Cheſter*, and *Man*: *Canterbury* has all the others. 4 *Inſt.* 322.

By the *St.* 25 *H.* 8. 20. The Archbiſhops upon a *Congè d'eſlire* are elected, and afterwards confirmed, and conſecrated. *Vide Poſt*, (C. 2.)

Every Biſhop and Archbiſhop *tenet per Baroniam* of the King's Foundation; and therefore is a Peer in Parliament. 4 *Inſt.* 45, 362.

The Juriſdiction of the Archbiſhop is *Ordinary*, as every other Biſhop's within his Dioceſe. 3 *Lev.* 212. *Vide Poſt*, (C. 2.)

Or, *Superintendant* over all Eccleſiaſtical Perſons within his Province. 3 *Lev.* 212.

And therefore, All Eccleſiaſtical Acts within his Province are only voidable, and not void, tho' done when the Juriſdiction belonged to a Biſhop, or other Eccleſiaſtical Perſon within his Province; as, if he grants Adminiſtration when there are not *Bona Notabilia*. *Vide Adminiſtrator*, (B. 5.)

Or, if he inſtitutes to an Advowſon within a Peculiar in his Province. *R.* 3 *Lev.* 212.

So an Archbiſhop has a provincial Power over all Biſhops within his Province; and may hold a Court where he pleaſes within his Province; and in Perſon officiate as Judge. *R.* 1 *Sal.* 134.

And may deprive. *R.* 1 *Sal.* 135. *Carth.* 485.

Or, convene them before him for Miſdemeanor in their Function. *R. Carth.* 485.

## (C. 2.) Biſhop.

(C. 2.) How choſen.

All the Biſhopricks in *England* are of the King's Foundation, and he is their Patron. *Co. L.* 134. *a.* 1 *Rol.* 880.

And they were originally Donative by the Delivery of the Ring and Crozier. *Co. L.* 134. *a.* 1 *Rol.* 882. *l.* 25 *ad* 50. *Dav.* 90. 2 *Rol.* 102, 130. *Vide Donative.*

But King *John* granted them to be elective. *Co. L.* 134. *a.* 1 *Rol.* 880. *l.* 25 *ad* 50. *Dav.* 93. 2 *Rol.* 102, 3. *Cod. Ju. Eccl.* 121.

And now, by the *St.* 25 *H.* 8. 20. On Avoidance of an Archbiſhoprick, or Biſhoprick within any of the King's Dominions, the King ſhall grant a *Congè d'eſlire*, containing the Name of the Perſon to be choſen, and the Dean and Chapter, *&c.* ſhall elect the Perſon ſo named, and no other. And if they delay Election above 12 Days after Letters miſſive delivered, the King may by Letters Patent nominate whom he ſhall think fit to ſuch Dignity. *Vide* 1 *Sal.* 136. 2 *Rol.* 101.

And after ſuch Election certified under their Common Seal, and Oath and Fealty to the King, his Majeſty ſhall by Letters Patent ſignify ſuch Election, if of an Archbiſhop, to ſome other Metropolitan in his Dominions and two Biſhops, or to four Biſhops; if of a Biſhop, to the Archbiſhop of the Province, or, if vacant, to ſome other Metropolitan, who ſhall confirm the Election, and inveſt and conſecrate the Perſon elected.

By the *St.* 1 *E.* 6. 2. Archbiſhopricks and Biſhopricks were made Donative: but that Statute is now repealed by the *St.* 1 *M. ſſ.* 2. *c.* 2. *and* 1 *El.* 1. and the *St.* 25 *H.* 8. 20. revived. *Co. L.* 134. *a.* *R.* 12 *Co.* 7.

And therefore, upon the Death of a Biſhop, the Dean and Chapter certified the King of it in *Chancery*, and pray the King's Licence to elect; upon which a *Congè d'eſlire* goes, and they make the Election, and certify it to the perſon elected himſelf, and have his Conſent, then to the King in *Chancery*, and to the Archbiſhop; and the King by his Letters Patent aſſents, and commands the Archbiſhop to confirm and conſecrate; who examines the Election, and the Ability of the Perſon, and afterwards confirms and conſecrates him. *Jon.* 160.

And there is the ſame Proceeding when a Biſhop is tranſlated, except the Conſecration, as when he is newly elected. *R. Jon.* 160. 1 *Sal.* 136, 7. 2 *Rol.* 452.

And by the *St.* 8 *El.* 1. and 39 *El.* 8. All Archbiſhops and Biſhops of the Realm are declared lawfully ſuch. 4 *Inſt.* 321, 2.

A Biſhop, tho' choſen, and tho' he has the Temporalties delivered to him, is not a compleat Biſhop, (unleſs it be upon a Tranſlation,) till his Conſecration. 1 *Rol.* 888. *l.* 10. 2 *Rol.* 451.

Nor can he do a Judicial Act; as, Inſtitution to a Church, *&c.* 2 *Rol.* 451.

Yet he may do Miniſterial Acts; as, a Certificate of Baſtardy, Excommunication, *&c.* 2 *Rol.* 451.

But a Biſhoprick in *Ireland* is now Donative. 1 *Sal.* 136. *Pal.* 27. *Vide Ireland.* (E.)

And the Biſhop ſhall be created by Patent only. *R.* 2 *Cro.* 553. 2 *Rol.* 101, 130.

The Juriſdiction of a Biſhop and Archbiſhop, as to the Puniſhment of Offences, and the Hearing and Determining of Cauſes, is derived out of the Crown. *Vide Prærogative*, (D. 9.)

And therefore, a Biſhop may make a Layman his Commiſſary, Chancellor, or Official. *R. Jon.* 264. *Cro. Car.* 258.

Or may officiate as Judge in Perſon. 1 *Sal.* 134.

So,

So, tho' the *St.* 37 *H.* 8. 17. ſays, Any Layman married or unmarried may, being a Doctor of the Civil Law, be a Commiſſary, Official, Regiſter, *&c.* yet if he be not a Doctor of the Civil Law, he may be a Commiſſary, *&c.* for the Statute ſpeaks in the Affirmative only. *R. Cro. Car.* 258. *R. Cro. El.* 314.

A Biſhop is a Biſhop of the Univerſal Church. *Vide Pal.* 345.

And therefore, a Biſhop of *Ireland*, or *Man*, has the Title of Biſhop here. *Pal.* 345.

As to Grant and Seiſure of Temporalties, *Vide Prærogative*, (D. 23, 24, 25.)

## (C. 3.) Dean and Chapter.

Every Archbiſhop, and Biſhop has a Dean and Chapter. 3 *Co.* 75. *a.* or a Chapter without a Dean. 2 *Rol.* 453.

All Deans and Chapters are either antient or new. *Co. L.* 95. *a.*

In the antient, the Dean was choſen by the Chapter upon a *Congè d'eſlire*, and the King having aſſented, he was confirmed by the Biſhop. *Co. L.* 95. *a.*

The Archbiſhops of *Canterbury* and *York* and the Biſhops of have antient Chapters.

The new Chapters are, where the King has tranſlated a Prior and Convent, *&c.* into a Dean and Chapter to a Biſhop; as, to the Biſhop of *Norwich*, *&c.* *Co. L.* 95. *a.* 3 *Co.* 73, 4.

Or, when the King, upon the Erection of a new Biſhoprick, erects a new Dean and Chapter. *Co. L.* 95. *a.*

By the *St.* 35 *El.* 3. Letters Patent for Erection, *&c.* of a Dean and Chapter are good.

And the Dean in the new Tranſlations and Erections is Donative, and by the King's Letters Patent is inſtalled. *Co. L.* 95. *a.*

The Dean is ſo called, becauſe he has ten Prebends or Canons at leaſt, of which the Chapter conſiſts. *Co. L.* 95. *a.*

And he is the Head of the Chapter. *Co. L.* 95. *a.*

And tho' the Dean and Chapter make a Corporation, yet the Dean, and every Prebendary of the Chapter, may be a Corporation by himſelf. 10 *Co.* 31. *b.*

So the Dean may have belonging to his Deanery, a Church, Prebend, or other Poſſeſſions. *Dy.* 273. *a.*

If a Deanery be Donative, and the King by Letters Patent grants the Deanery, without limiting any Eſtate; yet he has all the Eſtate in him, *viz.* to the Dean and his Succeſſors. *R. Dav.* 46. *a.*

So, if the King limits the Grant to him for Life, or at Will; yet he ſhall have the Fee. *Dav.* 46. *a.*

The Dean of a Cathedral or Collegiate Church is Perpetual, *viz.* for his Life.

And he may be a Lay as well as a Spiritual Man. *Dy.* 273. *a. in Marg. Semb. cont.* 2 *Rol.* 341. *l.* 10.

And his Dignity is not an Eccleſiaſtical Benefice: for he has not Inſtitution, except where it is Preſentative. *Lind.* 125.

Yet it is a Spiritual Promotion. 2 *Rol.* 341. *l.* 10.

A Sub-Dean is, either *pro hâc Vice*, ſubſtituted by the Dean; or Perpetual, choſen by the Dean and Chapter. *Lind.* 327.

But a Rural Dean is employed by the Biſhop and Archdeacon, and is temporary. *Lind.* 14, 79, 327.

The Office of the Dean and Chapter is, to adviſe and aſſiſt the Biſhop in Matters of Religion, to conſent to his Grants, Leaſes, &c. and to elect the Biſhop upon a Vacancy. 3 *Co.* 75.

The Dean and Chapter are a Corporation;

And have Capacity to take and alien, &c. as another Corporation.

So they may ſubſiſt, without any Lands or Poſſeſſions. 3 *Co.* 75. *b.* 2 *And.* 167.

A Dean has not a Freehold till his Inſtallment. 2 *Rol.* 451.

A Dean may ſurrender his Deanery to the King, by which it ſhall be diſſolved. *Dy.* 273. (*Vide* 3 *Co.* 75. *b.*)

## (C. 4.) Prebendary.

A Prebend is *Jus Spirituale percipiendi Proventus in Eccleſiâ, competentes percipienti ex divino Officio cui inſiſtit.* *Lind.* 144. *verb. Prebendas.*

A Canon is he, *qui eſt electus in Fratrem,* and has a Stall *in Choro,* & *Locum in Capitulo.* *Lind.* 144. *Dy.* 294. *b.*

A Prebend is derived out of a Canonry, *ut Filia ex Matre*; *ſed ſine Reditu non poteſt conſtitui.* *Lind.* 144.

But if a Prebendary aliens his whole Poſſeſſion, he continues Prebendary: for he has his Stall in the Choir, and his Voice in the Chapter. 3 *Co.* 75. *b.*

If he demiſes his Prebend, the Prebendary ſhall do the Things proper to his Function, and not the Leſſee.

He ſhall make a Commiſſary, which belongs to him by Preſcription, and the Leſſee cannot make one. *Ray.* 88.

## (C. 5.) Archdeacon.

An Archdeacon derives his Authority from the Biſhop, and ought to viſit as ſubordinate to him. *Hob.* 16. *Cod. Ju. Eccl.* 1009. 2 *Rol.* 448.

By the Canon 4° *Conc. Toledo.* 35 *A°* 630. *Temp. Honor.* 1. It was firſt allowed, That a Biſhop *Languore aut Occupationibus implicatus Prebiteros vel Diaconos mittat, qui Reddit' Baſilicar' Reparation' & Miniſtrantium vitam inquirant*; upon which the Biſhop divided the Dioceſe into Archdeaconries, and gave them Commiſſion to viſit. *Degs, Part* 2. *Ch.* 15. *Cod. Ju. Eccl.* 1006.

In the Time of the *Saxons,* they had Juriſdiction allowed in *England. Rights of Convocation* 292.

In the Time of *William the Conqueror* it was ordained, *quod Epiſcopus vel Archidiaconus,* (who before ſat with the Sheriff,) *placita in Hundredo amplius non teneat,* but Right ſhall be done by himſelf according to the Canons, &c. 2 *Rol.* 216. *l.* 15. *Jan. Angl.* 66.

And therefore, he is now as *Oculus Epiſcopi.* 4 *Inſt.* 339.

And may hold a Court within his Archdeaconry, where, by Preſcription, or Compoſition, he has Juriſdiction in Eccleſiaſtical Cauſes. 4 *Inſt.* 339. *Vide Courts,* (N. 9.)

By the *St.* 24 *H.* 8. 12. An Appeal lies from him to the Biſhop; or, if he be the Archdeacon of an Archbiſhop, to the Arches. *Vide Prærogative,* (D. 13.)

## (C. 6.) Parſon.

(C. 6.) Of what a Parſonage conſiſts. *Vide Parſon.*

A Parſon is he, *qui Perſonam gerit, viz.* the Rector of a Parochial Church. *Co. L.* 300. *a.*

A Rectory or Parſonage conſiſts of Glebe, Tithes, and Oblations, eſtabliſhed for the Maintenance of a Parſon, or a Rector to have Cure of Souls within the ſame Pariſh.

And there need not be more Glebe than the Soil of the Church, or Church-yard.

But there ought to be ſome Land; for if Tithes only be proved, it is not a Rectory. 1 *Sid.* 91. 3 *Sal.* 377.

(C. 7.) Who may be a Parſon.

Every Man, preſented, inſtituted, and inducted, ſhall be Parſon to a Church; tho' he be an Alien: for he may take a Spriritual Poſſeſſion, not a Temporal one. 2 *Rol.* 348. *l.* 20. *Vide Eſgliſe*, (M.)

So, an Abbot, *&c.* tho' dead in Law. 2 *Rol.* 348. *l.* 10.

So, one *mere Laicus*; for he is Parſon till Deprivation. 2 *Rol.* 348. *l.* 30. *Vide Eſgliſe*, (M.)

Or, wholly illiterate. 2 *Rol.* 348. *l.* 32.

(C. 8.) Who not.

By the *St.* 13 *El.* 12. None ſhall be admitted to any Benefice with Cure, unleſs he be of the Age of 23 Years at leaſt, and a Deacon.

And none ſhall be a Miniſter, or admitted to preach and adminiſter the Sacraments under the Age of 24 Years.

So, *by the ſame Statute*, None ſhall be admitted to preach or adminiſter the Sacraments, unleſs he bring to the Biſhop a Teſtimonial of his honeſt Life and profeſſing the Doctrine of the 39 Articles; and be able to give an Account of his Faith in *Latin* according to the ſaid Articles, or have a ſpecial Gift to be a Preacher.

Nor ſhall be admitted to the Order of Deacon, unleſs he firſt ſubſcribe the ſaid Articles.

Nor to a Benefice with Cure, unleſs he ſhall firſt have ſubſcribed the ſaid Articles in Preſence of the Ordinary, and publickly read the ſame in the Church of that Benefice, with Declaration of his unfeigned Aſſent to the ſame.

So by the *St.* 13 & 14 *Car.* 2. 4. None ſhall be admitted to a Parſonage, Vicarage, Benefice, *&c.* before he be ordained Prieſt, according to the Form thereby eſtabliſhed, unleſs he was before in Epiſcopal Orders.

So, *by the ſame Statute*, He ought to declare his unfeigned Aſſent and Conſent to all Things contained in the Book of Common Prayer in two Months after actual Poſſeſſion, or elſe ſhall be *ipſo facto* deprived; and the Patron may preſent, *&c.* as if dead. *Vide Parſon*, (C.)

So a Woman cannot be a Parſon; for the Preſentation, Inſtitution, and Induction of her is null and void. 2 *Rol.* 348. *l.* 33. *Hob.* 149.

(C. 9.) The Intereſt of the Parſon.

The Parſon is ſeiſed in Right of his Church, and the Freehold of the Church, Church-yard, and Glebe belong to him. *Co. L.* 300. *b.* *Vide Poſt*, (C. 14.)—*Eſgliſe*, (G. 1.)

And therefore, he may ſue and be ſued for the Right of his Church. *Co. L.* 300. *b.*

So, for the Benefit of his Church or Succeſſor, he ſhall be reputed to have the Inheritance *quodam modo*; and therefore, he may have Waſt, and declare *ad Exhæreditationem Eccleſiæ*. *Co. L.* 341. *a.*

If his Leſſee aliens, *&c.* he may have a Writ of Entry *Ad Communem Legem* after his Death, or *in Conſimili Caſu* during the Life of the Leſſee: which Writs lie only for him, who has an Inheritance, or Reverſion for Life. *Co. L.* 341. *b.* *F. N. B.* 206. *F.* 207. *G.* 49. *D.*

So he ſhall have an *Ad Terminum qui præteriit*, and a *Quod Permittat* in the *Debet*. *Co. L.* 341. *b.*

A Writ of *Meſne*, or a *Contra formam Feoffamenti*. *Co. L.* 341. *b.*

So he ſhall have a *Ceſſavit*. *F. N. B.* 49. *C.*

And, upon a Grant to him and his Succeſſors, he ſhall have a *Quid Juris clamat*, a *Per quæ ſervitia*, or a *Quem redditum reddit*. *F. N. B.* 49. *H.*

So, if he be diſſeiſed, or aliens in Fee, *&c.* his Succeſſor may have a *Juris Utrum*. *F. N. B.* 48. *R.*

Or, if another recovers againſt him by Default, or by Verdict, when he did not pray in Aid of the Patron and Ordinary. *F. N. B.* 48. *R.*

Or, intrudes into the Rectory after the Death of his Predeceſſor. *F. N. B.* 49. *A.*

So a Parſon may receive Homage. *Co. L.* 341. *b.*

If a Parſon be diſſeiſed, he himſelf ſhall have an Aſſiſe, or a Writ of Entry in the *Per*, *Cui*, or *Poſt*, or in the *Quibus*. *F. N. B.* 49. *B.*

But, properly, the Fee-Simple is not in the Parſon; but in Abeyance. *Lit. S.* 646.

And therefore, he cannot have a Writ of Right. *Lit. S.* 645.

Nor a Writ in the Nature of a Writ of Right, as a Writ of Right upon a Diſclaimer, of Cuſtoms and Services, *Ne injuſte vexes*, *Rationabilibus diviſis*, *Quo jure*, *&c.* *Co. L.* 341. *b.*

## (C. 10.) Vicar.

(C. 10.) The Original of Vicarages.

When a Church was appropriated it was uſual to endow a perpetual Vicar with Parcel of the Rectory to have the Cure of Souls.

And by the *St.* 15 *R.* 2. 6. and 4 *H.* 4. 12. The Appropriation ſhall be void, if a perpetual Vicar be not inſtituted and inducted into ſame Church, and convenably endowed.

Before thoſe Statutes, the Endowment of a Vicarage upon an Appropriation was not neceſſary. 2 *Rol.* 99.

And thoſe Statutes extend only to future Time. 2 *Rol.* 99, 127. *R. Pal.* 222.

(C. 11.) How created.

The Parſon, Patron, and Ordinary may create a Vicarage without the King's Aſſent. 2 *Rol.* 334. *l.* 17.

So, in Time of Avoidance, the Patron, and Ordinary. 2 *Rol.* 334. *l.* 27.

So, the Parſon appropriate, and the Ordinary. 2 *Rol.* 334. *l.* 20, 35.

Tho' the Appropriation be to thoſe who have not *Curam animarum*; as, to a Dean and Chapter, Nunnery. *Plo. Com.* 497. 2 *Rol.* 334. *l.* 25.

But the Ordinary without the Patron cannot create a Vicarage. 2 *Rol.* 334. *l.* 15.

(C. 12.) Or re-united.

So the Vicarage may be re-united to the Parſonage; if it be impoveriſhed. 2 *Rol.* 337. *l.* 50.

Or, if the Parſonage be impoveriſhed. 2 *Rol.* 338. *l.* 10.

And may be re-united by the Parſon appropriate, and Ordinary, in Time of Vacation of the Vicarage. 2 *Rol.* 337. *l.* 25. *Pal.* 222.

By Parſon, Ordinary, and Vicar, when the Vicarage is full. *Ley* 14.

So, by the Pope as Supream Ordinary, the Parſon, and Vicar, where, by ſubſequent Uſage, the Intent appears. *R.* 2 *Rol.* 99, 127.

If the Parſon appropriate preſents the Vicar to the Parſonage, with the Conſent of the Ordinary, this re-unites them. 2 *Rol.* 338. *l.* 5.

Or, preſents to the Vicarage by the Name of *Parſonage*. 2 *Rol.* 338. *l.* 17.

So, if the Parſonage be recovered by a Title *paramount* the Endowment of the Vicarage, they are re-united. 2 *Rol.* 338. *l.* 30.

And

And by Union, the Endowment of the Vicarage returns to the Parſonage. 2 *Rol.* 338. *l.* 8.

But a Vicarage ſhall not be re-united by the Ordinary, except for Impoveriſhment. 2 *Rol.* 338. *l.* 12.

And, a Preſentation of the Vicar to the Parſonage, by the Leſſee of the Parſon, does not bind his Leſſor. 2 *Rol.* 331. *l.* 6.

Or, a Preſentation by any other than the Parſon. 2 *Rol.* 338. *l.* 22.

Or, by the King. *Dub.* 2 *Rol.* 338. *l.* 25.

So after the *St.* 4 *H.* 4. 12. A Vicarage ſhall not be diſſolved. 2 *Cro.* 517.

Nor after the *St.* 31 *H.* 8. 13. when the Parſonage is come to a Temporal Hand. 2 *Cro.* 518.

(C. 13.) Endowment. *Vide Ante,* (C. 10, &c.)

By the *St.* 15 *R.* 2. 6. and 4 *H.* 4. 12. The Ordinary ſhall endow the Vicarage according to the Value of the Church.

So, if the Vicarage be impoveriſhed, the Ordinary may enlarge the Maintenance. 2 *Rol.* 337. *l.* 30. 338. *l.* 1.

And there ſhall be a Suit for it in the Eccleſiaſtical Court. 2 *Rol.* 337. *l.* 35.

And the Vicar may libel there for Encreaſe of Maintenance againſt the Parſon impropriate and his Leſſee, by the *St.* 32 *H.* 8. *R.* 2 *Rol.* 337. *l.* 30.

So an Endowment may be enlarged by the Biſhop, upon Notice to all, who are intereſted, tho' a Power to enlarge be not reſerved upon the Original Endowment. *Hard.* 329.

So, if there be no Endowment of a Vicarage, Equity, upon an Information by the Attorny-General, will compel the Impropriator of the Small Tithes to make an Allowance. *R.* 1 *Ver.* 247.

Otherwiſe, if there be an Endowment, tho' ſmall. 1 *Ver.* 247.

The Endowment ſhall be conſtrued by Uſage; and therefore, if a Vicar be endowed *de minutis Decimis*, and he has uſed to have Tithes of Wood of the yearly Value of 6*s.* 8*d.* tho' Wood in its Nature is a great Tithe, yet in Reſpect of the ſmall Value and the Uſage, the Vicar ſhall have the Tithes of the Wood. *R.* 2 *Rol.* 335. *l.* 45.

So, if he be endowed *de Decimis Garbarum*, and by Uſage he has always had the Tithe of Hay, as well as of Corn. *R.* 2 *Rol.* 335. *l.* 30. for an Augmentation of the Endowment ſhall be intended. *Hard.* 328. *Pal.* 222. 2 *Rol.* 161.

So it ſhall be conſtrued liberally: As, if a Vicar be endowed of all Tithes, except Corn; he ſhall have Hops, Rape-Seed, *&c.* tho' they be Things newly ſown in *England*. *R.* 2 *Rol.* 334. *l.* 40.

If he be endowed of ſmall Tithes, and Arable Land is afterwards converted into Paſture, he ſhall have the ſmall Tithes of it. 2 *Rol.* 335. *l.* 23.

If endowed of all the Tithes of a Manor, he ſhall have the Tithes of the Freeholds, as well as of the Copyholds; for they all make the Manor. *R.* 2 *Rol.* 335. *l.* 27. *Cro. El.* 463. *Ow.* 58.

Yet a Vicar ſhall not have Tithes of the Glebe, tho' ſevered after the Endowment. *R.* 2 *Rol.* 335. *l.* 10.

So, if there be no Endowment, the Vicar cannot claim any Thing. *R. Pal.* 426. *Vide ſupra.*

(C. 14.) The Intereſt of the Vicar. *Vide Egliſe,* (G. 1.)

By the Common Law the Vicar had not the Freehold of the Church or Church-yard, nor could have a *Juris Utrum* for his Glebe, nor be named Tenant to the *Præcipe* for his Glebe, without his Parſon. 2 *Rol.* 336. *F.*

But

But now, by the *St.* 14 *Ed.* 3. 17. A Vicar, *&c.* ſhall have a *Juris Utrum* for Lands, *&c.* of the Vicarage, and recover in other Writs, as a Parſon may.

And therefore, he ſhall have an Aſſiſe. 3 *Sal.* 377.

So a Vicar ſhall have Aid of the Parſon, Patron, and Ordinary. 2 *Rol.* 336. *l.* 48.

So a Vicar ſhall have the Trees in the Church-yard; for he ſtands liable to the Repairs of the Church. *Semb.* 2 *Rol.* 337. *l.* 15.

## (C. 15.) What Perſons have Cure of Souls.

The Parſon of a Pariſh-Church has *Curam animarum.*

And the perpetual Vicar, who is Preſentative. 2 *Cro.* 517.

So a Parſon appropriate, till a Vicar be eſtabliſhed. 2 *Rol.* 341. *l.* 50.

So, the Parſon, where the Vicar is inſtituted only in Aid of the Parſon.

So a Donative of the King may have the Cure. 2 *Rol.* 341. *l. ult. Vide Donative.*

So the Parſon and Vicar may both have the Cure; the Parſon *habitualiter*, the Vicar *actualiter.* 2 *Cro.* 518.

But if a Perpetual Vicar be preſented, the Parſon ceaſes to have the Cure. 2 *Rol.* 341. *l.* 47.

So a Dean, or Archdeacon has not the Cure.

So a Prebendary has not the Cure. 2 *Rol.* 341. *l.* 45. *Cro. El.* 79.

## (C. 16.) Who are Dignitaries.

Every Promotion in the Church, having Juriſdiction annexed, is a Dignity: As, a Deanery. *Cro. El.* 663.

An Archdeaconry. *Semb. cont. Cro. El.* 663.

But a Parſon is not a Dignitary. *Cro. El.* 663.

Nor a Provoſt. *Cro. El.* 663.

Nor a Chaplain, or Prebendary. *Cro. El.* 663.

## (D) What Privileges belong to Eccleſiaſtical Perſons.

*ſee 2. ſo. Abr. Prerogative (D). Vin. same title (L.e.)*

BY the *St. M. Ch.* 9 *H.* 3. 1. *Eccleſia ſit libera, & habeat omnia Jura ſua & Libertates illæſas.* So, by the *St.* 50 *Ed.* 3. 1.

And this extends to all Eccleſiaſtical Perſons. 2 *Inſt.* 3.

And therefore, no Eccleſiaſtical Perſon ſhall be choſen to a Temporal Office: As, Sheriff. *Vide infra.*

Nor ſhall be Expenditor for Lands, which he has within a Level, for Sewers. *Per* 2 *J.* 1 *Mod.* 282. 1 *Lev.* 303.

Nor, ſhall be Conſtable, Reeve, Beadle, *&c.*

Nor ſhall be bound to ſerve in War in Perſon; for *Militans Deo ne implicet ſe Negotiis ſecularibus.* 2 *Inſt.* 4.

And therefore, if he holds Lands by *Chivalry, &c.* he ought to find a ſufficient Deputy, or pay Eſcuage; and need not ſerve in Perſon. *Co. L.* 99. *a.*

So, if he has Lands, by Reaſon of which he ought to be a Reeve, Beadle, *&c.* when choſen, if he was a Lay-man; he ſhall not be choſen, being *infra Sacros Ordines:* or if he be, he ſhall have a Writ for his Diſcharge, and upon that an *Alias, Pluries,* and Attachment. *F. N. B.* 175. *B. Reg.* 187. *b.* 2 *Inſt.* 3.

So by the *St. Marl.* 52. *H.* 3. 10. all Eccleſiaſtical Perſons are diſcharged of Suit at the Leet, or Turn. 2 *Inſt.* 4, 121.

So, by the Common Law, *eundo, morando, aut redeundo* from Divine Service, a Prieſt cannot be arreſted. 12 *Co.* 100. 2 *Bul.* 72.

And by the *St.* 50 *Ed.* 3. 5. and 1 *R.* 2. 15. He that ſo arreſts ſhall ſuffer Impriſonment, Ranſom, and make Gree to the Party: provided he do not hold himſelf there by Colluſion.

So an Action lies upon theſe Statutes, if a Clerk be arreſted, when attending upon Divine Service. *Vide* 12 *Co.* 100.

Tho' it be thro' Ignorance, and he is afterwards diſcharged.

So one may be ſued for it in the Eccleſiaſtical Court, and ſhall pay Coſts. *Vide* 2 *Bul.* 72.

But the Arreſt is good; and a Reſcuer is not excuſed.

So he may be arreſted at the Suit of the King; as, upon a Warrant of a Juſtice of Peace.

Or, if he abſconds, and cannot otherwiſe be taken.

So a *Capias* does not lie againſt an Eccleſiaſtical Perſon, who has a Benefice: and for his Security, upon a Statute Staple, Merchant, or Recognizance, there ſhall be awarded a *Capias ſi laicus.* 2 *Inſt.* 4.

So, in any other Action where a *Capias* lies, if the Sheriff returns, *Clericus beneficiatus, nullum habens laicum Feodum*, there ſhall be a Writ to the Biſhop, commanding, that he compel him to appear. 2 *Inſt.* 4. 2 *Rol.* 220. *l.* 45.

And if the Biſhop does not cauſe him to appear, a *Diſtringas* goes againſt the Biſhop. *Reg.* 26. *b.*

So, if upon a *Fieri facias* the Sheriff returns *Clericus beneficiatus, &c.* there ſhall be a *Fieri facias* to the Biſhop to levy *de Bonis Eccleſiaſticis. Reg.* 22, 26. *b.*

And upon ſuch Writ to the Biſhop, he by his Mandate ſhall ſequeſter his Benefice till he appears, or the Money be levied. 1 *Sal.* 320.

But where the Sheriff returns *Clericus nullum habens laicum Feodum*, without ſaying *beneficiatus*, a *Capias* ſhall be granted to the Sheriff againſt him; for it does not appear that he has a Benefice, by which he may be warned by the Biſhop. 2 *Inſt.* 4.

So, upon a *Fieri facias* againſt a Biſhop, the Sheriff ought not to return *Clericus beneficiatus*; for he has Temporalties. *Semb. Het.* 20.

So, if the Return is *Clericus beneficiatus*, the Biſhop cannot ſequeſter his Salary, as Fellow of a College, by a Mandate to the Maſter, *&c.* for that is no Benefice. *R.* 1 *Sal.* 320.

So, in other Caſes, an Eccleſiaſtical Perſon is not privileged from an Arreſt for a juſt Cauſe. 2 *Rol.* 220. *l.* 40.

So by the *St. M. Ch.* 1. All Poſſeſſions and Goods of Eccleſiaſtical Perſons ſhall be freed from all Exactions. 2 *Inſt.* 2.

And by the *St.* 9 *Ed.* 2. *Art. Cleri.* 9. The Goods of Eccleſiaſtical Perſons ſhall not be diſtrained *in viâ Regiâ, aut Feodis Eccleſiaſticis quibus olim dotatæ.* 2 *Inſt.* 4, 627.

So by the *St.* 18 *Ed.* 3. (not printed) Eccleſiaſtical Poſſeſſions, acquired before 20 *Ed.* 1. were exempted from Tenths and Fifteenths granted by Parliament to the King; becauſe they were charged 20 *Ed.* 1. with Tenths to the Pope. 2 *Inſt.* 628.

So, for Tithes, which are Spiritual, *Nullus de reparatione Pontis, aut aliquibus Oneribus temporalibus onerari debet.* 2 *Inſt.* 641.

And Eccleſiaſtical Perſons ſhall be diſcharged of Tolls, Cuſtoms, Average, Pontage, Paviage, *&c.* for their Eccleſiaſtical Goods. 2 *Inſt.* 4.

And if they be moleſted, they may have a Writ for their Diſcharge. *F. N. B.* 227. *F. Reg.* 260.

So, for Goods bought for their Suſtenance. *F. N. B.* 227. *F.*

So they ſhall be diſcharged of Purveyance for their own proper Goods. 2 *Inſt.* 3, 35.

And ſhall have the King's Writ for their Diſcharge. *F. N. B.* 30. *A.*

By the *St. M. Ch.* 9 *H.* 3. 21. *Nulla Carecta dominica Perſonæ Eccleſiaſticæ, &c. per Ballivos noſtros capiatur.*—Confirmed as to all Purveyance, by the *St.* 14 *Ed.* 3. 1. 18 *Ed.* 3. 4. and 1 *R.* 2. 3. *Vide* 2 *Inſt.* 35.

So, if an Eccleſiaſtical Perſon fears that his Goods, or the Goods of his Farmer will be taken by any Miniſter of the King, he may have a Protection *cum Clauſulâ Nolumus* for his Security. 2 *Inſt.* 4. *F. N. B.* 29. *A.*

So an Eccleſiaſtical Perſon is capable of a Temporal Office: for where a Petition was, that he ſhould not be Chancellor, Treaſurer, Clerk of the Privy Seal, Baron of the *Exchequer*, Chamberlain of the *Exchequer*, Comptroller, *&c.* the King anſwered, that he will do as he thinks fit. 2 *Rol.* 221. *l.* 5. *Vide ſupra.*

But the *St. M. Ch.* 9 *H.* 3. 1. confirms only the antient Rights of Eccleſiaſtical Perſons; and does not give them any new ones. 2 *Inſt.* 3.

So, notwithſtanding *Art. Cleri.* 9. the Goods of Eccleſiaſtical Perſons may be taken for Iſſues, or other Dues to the King. 2 *Inſt.* 627.

So Toll, *&c.* may be taken of them, if they merchandize; for the Writ ſays, *dum Merchandizas non exerceant de eiſdem. Cont. per Herle, F. N. B.* 227. *F.*

So, by expreſs Cuſtom or Preſcription, Tithes, *&c.* in the Hands of a Spiritual Perſon may be charged to Pontage, Murage, *&c. Cal.* 101.

So the Clergy ſhall be liable to all Charges impoſed by Act of Parliament, if they be not exempted by the ſame Act. *R.* 1 *Vent.* 273.

As, to Rates made purſuant to *St.* 43 *El.* for Relief of the Poor.

So they ſhall be bound by the Statutes, which require the ſending of Carts and Horſes for the Repair of the Highway. *R.* 1 *Vent.* 273. *cited Lut.* 1563. 2 *Lev.* 139.

But a Tax or Subſidy charged upon a Biſhop, Parſon, *&c.* if he dies, ſhall not be a Charge upon his Succeſſor, but upon his Heir or Executor only. *R. Lane* 51.

So by the *St.* 21 *H.* 8. 13. No Spiritual Perſon ſhall take to Farm to himſelf or his Uſe, from the King or others, by Writing or *Parol*, any Lands, Tenements, *&c.* for Life, Years, or at Will, on Pain of 10*l.* a Month, *&c.*

Nor ſhall take any annual Rent or Profit, by Reaſon of ſuch Leaſe or Farm, *&c.* on Pain of 10*l.* a Month, and ten Times as much as he or any to his Uſe ſhall take in ſuch Rent, Profit, *&c.* a Moiety to the King, the the other, *&c.*

And ſuch Leaſe, *&c.* to any Spiritual Perſon or his Uſe ſhall be void, as well againſt the Leſſor as the Leſſee.

Nor ſhall, being beneficed with Cure, occupy any Parſonage or Vicarage in Farm of the Leaſe of any other, nor take any Rent or Profit out of ſuch Farm, on Pain of 40*s. per* Week, *&c.*

But *by the ſame Statute*, Spiritual Perſons may take to Farm the Temporalities of an Archbiſhop, Biſhop, *&c.* during Vacation.

Or if their Glebe be not ſufficient, *&c.* may take in Farm other Lands for the Expence of their Houſes, and Hoſpitalities.

And may keep as much of their Lands, *&c.* in Right of their Houſes, as ſhall be neceſſary for their Cattle and Corn, for the Maintenance of their Houſeholds and Hoſpitalities, without Fraud.

And may take Dwelling-Houſes with Orchards and Gardens in a City, Borough, or Town, for their own Habitation.

So, if a Spiritual Perſon takes a Leaſe for Years, or at Will of Lands, &c. it ſhall not be void. *R. Dy.* 358. *a.*

So by the *St.* 21 *H.* 8. 13. No Spiritual Perſon ſhall buy, to ſell again for Profit, in any Market, Fair, &c. any Cattle, Corn, Lead, Tin, Hides, Leather, Tallow, Fiſh, Wooll, Wood, Victual, or Merchandize, on Pain of treble Value, &c. And ſuch Contract ſhall be void.

Nor ſhall uſe any Tanhouſe, or Brewhouſe, unleſs for Service of the Houſe, on Pain of 10 *l. per* Month, &c.

But *by the ſame Statute*, if a Spiritual Perſon buys without Fraud, Horſes, Cattle, Goods, &c. for his neceſſary Uſes, and afterwards diſlikes them, he may ſell them again, &c.

## Eccleſiaſtical Cenſures.

*Vide Prærogative*, (D. 12.)

## Eccleſiaſtical Courts.

*Vide Courts*, (N. 1, &c.)—*Diſmes*, (M. 1, &c.)

## Eccleſiaſtical Juriſdiction, and Laws.

*Vide Prærogative*, (D. 9, &c.)

# EGYPTIANS.

*Vide Juſtices*, (S. 9.)

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# EJECTMENT.

## (A) By whom it lies.

AN Ejectment lies by a Leſſee for Years for Recovery of his Term, and Damages, if he be ouſted by his Leſſor, or a Stranger. *F. N. B.* 220.

Of what Things it lies, or not, and upon what Demiſe, and how the Judgment ſhall be, *Vide Pleader*, (2 Z. 1, &c.)

But now the Courſe is to make a nominal Plaintiff upon a feigned Demiſe.

And after the Declaration delivered, the Plaintiff may be changed by Rule of Court, before Plea, if there be Cauſe for it; as, if he be a Witneſs upon the Trial of the Cauſe. 5 *Mod.* 333.

## (B) By whom not.

BUT an Ejectment does not lie by him, who has not an immediate Intereſt or Poſſeſſion: As, if a Leaſe be to *A.* for Years, and afterwards to *B.* for Years, and *A.* be ouſted; *B.* cannot bring an Ejectment. 1 *Rol.* 3.

So it does not lie by him, who has only a Poſſeſſion in Law; As, if Leſſee for Years makes a Leaſe at Will to one, who is ouſted; the Leſſee for

for Years ſhall not maintain an Ejectment. *R.* 1 *Rol.* 3. *Tanf. cont. but Co. acc. ibid.*

So it does not lie by any one when his Intereſt is determined; as, if a Man covenants to ſtand ſeiſed of 100 *l. per Ann.* to the Uſe of his Daughters, till they raiſe 500 *l.* for their Portions *ſucceſſivé*; after 12 Years the eldeſt Daughter cannot enter or have an Ejectment, tho' her Portion was not raiſed: for that would be to the Prejudice of the other Daughters. *R. Cro. El.* 800.

By the *St.* 4 *Geo.* 2. 28. If half a Year's Rent be due, the Leſſor having Title of Re-entry may, without legal Demand or Re-entry, ſerve an Ejectment, and on Judgment againſt the Caſual Ejector, or Nonſuit for not confeſſing Leaſe, Entry, and *Ouſter*, on Proof by *Affidavit*, or, if Defendant appear, on Proof at the Trial, that half a Year's Rent was due, and no ſufficient Diſtreſs, and he had Title to re-enter, the Plaintiff ſhall have Judgment and Execution; and after 6 Calendar Months after Execution and no Payment of Arrears and Coſts, the Leſſee, or any claiming under him, ſhall have no Relief in Equity.

Provided, a Mortgagee not in Poſſeſſion ſhall not be barred, if in 6 Calendar Months after Execution, he pay all Arrears and Coſts, and perform the Covenants of the Leaſe. *

* [By the *St.* 11 *G.* 2. 19.

The Tenant, to whom a Declaration in Ejectment ſhall be delivered, ſhall forthwith give Notice to his Landlord on Pain of forfeiting the Value of 3 Years improved Rent.

And the Court may ſuffer the Landlord to make himſelf Defendant by joining with the Tenant; but in Caſe the Tenant ſhall neglect to appear, Judgment ſhall be ſigned againſt the Caſual Ejector; but if the Landlord ſhall deſire to appear by himſelf and conſent to enter into the Common Rule, the Court ſhall permit him ſo to do, and order a Stay of Execution upon the Judgment againſt the Caſual Ejector till further Order.]

## Ejectment of Ward.

*Vide Gardian*, (H. 2.)

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# ELECTION.

## (A) Election; Who ſhall have it.

### (A. 1.) He, who ought to do the firſt Act.

IF an Election be given to another of two ſeveral Things, he, who ought to do the firſt Act, ſhall have the Election: As, if a Man grants to another to have a Rent, or a Robe yearly at ſuch a Feaſt, the Grantor has an Election to deliver the one or the other. *Co. L.* 145. *a.*

If an Obligation be with Condition, *that if the Obligor work out the* 40 *l. in Packing when the Obligee hath Occaſion to employ him, or pay the* 40 *l. then, &c.* The Obligee hath Election to take the 40 *l.* in Work or Money. *R.* 2 *Mod.* 304.

If a Father having 3 Daughters grants to *A.* the Diſpoſition of the Marriage of one of them; the Father ſhall chuſe of which Daughter *A.* ſhall have the Marriage. *R. per all the J. Dal.* 73.

If

If *A.* enfeoffs *B.* of the Manor of *D.* except a Cloſe named *N.* and there are two Cloſes named *N.* one 9 Acres, the other 3 Acres; the Feoffor ſhall chuſe which Cloſe he ſhall have. *R.* 1 *Leo.* 268.

So, if a Man leaſes, rendring Rent, or a Robe; the Leſſee has an Election to pay the one, or the other; for he is to do the firſt Act. *Co. L.* 145. *a.*

So, if a Man grants out of his Wood ſo many Cart-loads of Maple, or Hazle; the Grantee has the Election to take the one, or the other. *Co. L.* 145. *a.*

If he grants one of the Horſes in his Stable; the Grantee has an Election to take which he pleaſes. *Co. L.* 145. *a.*

If a Man conveys 2 Acres, the one for Life, the other in Fee; the Grantee has an Election to take the one, or the other. 1 *Rol.* 725. *l.* 45.

So, if he levies a Fine of 10 Acres out of 100, the Conuſee has the Election. *R.* 1 *Rol.* 725. *l.* 35.

Or, if the Conuſee renders back to the Conuſor for Years, the Conuſor ſhall have the Election. *R.* 1 *Rol.* 725. *l.* 40.

If a Man covenants to make an Eſtate at the Coſts of *B.* in Fee, he ſhall chuſe what Conveyance he will make; for he is to do the firſt Act, *viz.* give Notice what Conveyance he will make. 2 *Mod.* 75. *Vide Poſt*, (A. 2.)

(A. 2.) Who ſhall do the firſt Act.

If a Man be bound to make an Aſſurance, he who is bound to make it, ought to do the firſt Act. *Cro. El.* 718. *Vide Condition*, (H.)

Tho' it is to be made at the Charge of the Covenantee, Obligee, *&c.* *R.* 5 *Co.* 22. *b.* *Vide Ante*, (A. 1.)

Tho' the Covenant be to make a particular Conveyance; as, a Feoffment, *&c.* *R.* 5 *Co.* 22. *b.* *R. cont. Mo.* 22.

If bound to make a Leaſe to *A.* for 3 Lives, which *A.* ſhall name; *A.* ſhall do the firſt Act. *R.* 2 *Mod.* 75.

So, if the Condition of an Obligation be in the Disjunctive, the Election ſhall always be in the Obligor; for the Condition was for his Benefit. 2 *Mod.* 201. *R.* 3 *Lev.* 137.

Tho' in one Part of the Disjunctive the Obligee ought to do the firſt Act. 2 *Mod.* 201.

If a Man has ſeveral Remedies for the ſame Thing, he has an Election to uſe which he pleaſes. *Co. L.* 145. *a.*

If a Conveyance operates ſeveral Ways, the Grantee, *&c.* may take it as he pleaſes: as, if a Man conveys to *A.* by Bargain and Sale, and by Fine, he may take by which he pleaſes if both are compleated together. *Semb.* 4 *Co.* 72. *a.*

If by Demiſe, Bargain and Sale, the Leſſee may take by Common Law, or by Way of Uſe. *R.* 2 *Co.* 35. *b.*

But a Man by his Wrong or Default may loſe his Election, and give it to the Feoffee, *&c.* As, if a Man grants ſo much Wood to be taken by Aſſignment; if the Grantor does not aſſign at the Day, the Grantee may take it in what Part of the Wood he pleaſes, without Aſſignment. *R.* 1 *Rol.* 725. *l.* 30.

If a Man enfeoffs another of 2 Acres, the one for Life, the other in Fee, and he makes a Feoffment of both; the Feoffor may enter for the Forfeiture in the one, or the other. *Co. L.* 145. *a.*

If a Man grants a Rent or a Robe, at ſuch a Feaſt, and does not deliver it at the Day; the Grantee may demand which he pleaſes. *Co. L.* 145. *a.*

So, if Leſſee, rendring Rent, or Corn, does not pay, the Leſſor ſhall have which he pleaſes. *R.* 1 *Rol.* 725. *l.* 25.

Yet, if the Thing, of which the Election is given, is to have Continuance, a Failure *unicâ vice* does not devolve the Election upon the other: As, if *A.* grants an Annuity, or a Robe, to *B.* to be paid at *Easter annuatim* for his Life; if *A.* does not pay, *B.* shall not have a Writ of Annuity for the one only, but for the one or the other, in the Disjunctive. *Co. L.* 145. *a.*

## (B) At what Time Election shall be made.

IF the Thing, of which the Election is given, is to be done *unicâ vici*, the Election ought to be at the Time. *Co. L.* 145. *a.*

So, if nothing passed or vested in the Grantee, *&c.* before his Election, it ought to be made in the Life of the Parties. *Co. L.* 145. *a.*

As, if a Man gives to *A.* such of his Horses, as *A.* and *B.* shall chuse, the Election ought to be in the Life of *A.* 1 *Rol.* 726. *l.* 2.

But where an Interest vests immediately by the Grant, *&c.* Election may be made by the Heir or Executor, as well as by the Party himself. *Co. L.* 145. *a.*

As, if a Fine be of 100 Acres, and the Conusee renders 50 to the Conusor for Years; his Executor may chuse which 50 he will have. *R.* 1 *Rol.* 725. *l.* 47.

If a Man gives one of his Horses to *A.* and *B*; after the Death of *A. B.* may chuse which he will take: for an Interest vested in them immediately by the Gift. 1 *Rol.* 725. *l.* 52.

So, if the Election determines only the Manner or Degree, in which he shall have the Thing; his Heir or Executor, as well as the Party himself may make it; for in such Case the Interest vests immediately. *Co. L.* 145. *a.*

As, upon a Grant of a Rent-Charge, the Heir or Assignee may elect to have it, as an Annuity, or as a Rent. *Co. L.* 144. *b.*

So, if the Thing, of which Election is given, is annual and to have Continuance, the Heir or Executor may make the Election.

*see 2. Bro. Ch. Rep. 415.*

## (C) Determination of an Election.

### (C. 1.) What shall be.

A Determination of a Man's Election shall be made by express Words, or by Act.

As, if a Man, who has Election to have a Fee in one Acre, or another, makes a Feoffment of one of them; this determines his Election. 1 *Rol.* 726. *D.*

If he leases two Acres, Remainder of one of them in Fee, and afterwards gives Licence to the Lessee to cut Trees in one; this amounts to an Election to have the Fee in the other. *Pl. Com.* 6. *b.* 1 *Rol.* 726. *l.* 10.

If a Covenant be to pay Tithes in Kind, or 20 *s.* at the Election of a Prebendary; by the Dissolution of the Prebend, and Corporation which ought to pay, the Election is gone. *R. Hard.* 387.

### (C. 2.) What not.

But if a Man has his Election to take by the Common Law, or by Way of Use, a general Entry does not determine his Election. *R.* 2 *Co.* 37. *b.*

If by Grant an Abbot has his Election to pay Tithes, or ſuch a Sum for them; the Election, by the Diſſolution, goes to the King and his Patentee. *Hard.* 383.

If a Man once determines his Election, it ſhall be determined for ever: As, if an Obligation delivered to the Uſe of *A.* be refuſed when he is firſt informed of it, he cannot afterwards accept it. *R.* 1 *Rol.* 726. *l.* 15.

If a Man diſtrains for Rent, he ſhall never after have Annuity; nor *vice verſâ*. *Vide Co. L.* 145. *a. b. Vide Annuity*, (C. 1, &c.)

So, if ſeveral Perſons have an Election, he, who firſt makes Election, determines it for ever. *Co. L.* 145. *a.*

But, where an Election is of ſeveral Remedies, if he chuſes one, he may afterwards have the other in perſonal Caſes; as, where he has Election of ſeveral Actions. *Co. L.* 146. *a.*

*Vide* more as to Election of Remedies, in *Action*, (M. 1, &c.)—*Annuity*, (C. 1, &c.)—*Audita Querela*, (D.)

## Guardian by Election.

*Vide Gardian*, (F. 1, 2.)

## Election of Juſtices of Peace.

*Vide Juſtices of Peace*, (A. 3.)

## Election in a Corporation.

*Vide Franchiſes*. (F. 20, &c. 29.)—*Mandamus*, (C. 2.)

## Election to Parliament.

*Vide Parliament*, (D. 8, &c.—E. 15.)—*Scotland*, (D. 4, 5.)

# ELEGIT.

*Vide Execution*, (C. 14.)—*Proceſs*, (E. 6.)

# ELOPEMENT.

*Vide Dower*, (F. 2.)—*Pleader*, (2 Y. 11.)

# ELY.

*Vide Franchiſes*, (D. 8.)

# EMBLEMENTS.

*Vide Biens*, (G. 1, 2.)

# EMBRACERY.

*Vide Maintenance.*

# ENACTING OF LAWS.

*Vide Parliament*, (G. 10, &c.)—*Prærogative*, (D. 1.)

# ENCLOSURE.

*Vide Droit*, (M. 1, 2.)

# ENDOWMENT.

*Vide Dower.*—*Eccleſiaſtical Perſons*, (C. 10, &c. 13.)

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# ENFANT.

## (A) Infant, Who ſhall be.

BY the Common Law, a Male or Female is called an Infant till the Age of 21 Years. *Co. L.* 171. *b.*

But by the Civil Law, the Age of 17 Years.

So a Man, born the firſt of *February* 1600, after 11 o'Clock at Night, might make a Will, &c. after one o'Clock in the Morning of the laſt Day of *January Anno* 1621; for he was then of full Age. *Per Holt*, 1 *Sal.* 44.

How the word Cauſe-Age ſhall be conſtrued, ſee 1. Cha. Rep. 100.

## (B) What he may do.

### (B. 1.) May purchaſe.

AN Infant has Capacity to purchaſe Lands or Tenements during his Infancy; for *primâ facie* it ſhall be intended for his Benefit. *Co. L.* 2. *b.*

And therefore, if a Feoffment be made to an Infant, and Livery to him in Perſon, it ſhall be good till it be avoided.

So, if an Infant makes a Letter of Attorny to take Livery, and Livery is made to him by Attorny; for it ſhall be intended for his Profit. *R.* 1 *Rol.* 730. *l.* 10.

(B. 2.) May

## (B. 2.) May levy a Fine, or ſuffer a Recovery.

So, if an Infant by Fine conveys his Eſtate to another, the Eſtate paſſes by Fine till it be avoided.

And, if he declares the Uſes by Deed, the Declaration of the Uſes ſtands good as long as the Fine is in Force; for he has Power to declare the Uſes, as incident. 2 *Co.* 58. *a.* *Per* 2 *Ch. J.* 10 *Co.* 42. *b.* *R.* 1 *Rol.* 730. *l.* 50. *Dal.* 47.

And tho' the Infant dies after the King's Silver paid, the ingroſſing ſhall not be ſtayed; for it is then a Fine. *Per* 3 *J. Dy. cont.* *Dy.* 220. *b.* *Dal.* 56.

So, if an Infant ſuffers a Common Recovery, and comes in as Vouchee in Perſon, or by Attorny, the Eſtate paſſes till the Recovery be reverſed. 2 *Inſt.* 483.

And if he comes in as Vouchee by Guardian, he ſhall be bound by it. *Cont.* 10 *Co.* 43. *a.* *R. acc. Cro. Car.* 307. *Hob.* 197. 1 *Rol.* 731. *l.* 5. 751. *l.* 50. 752. *l.* 1. *Jon.* 318. *R. Godb.* 161. *Acc.* 1 *Leo.* 211. 1 *Sid.* 321. *R. Cro. El.* (471, 2.)

And the King, upon Petition, may admit an Infant to ſuffer a Recovery by his Guardian. 1 *Ver.* 461. *Ley* 83.

But ſuch Admittance ought not to be granted, except upon urgent Neceſſity. *R. Sal.* 567.

So, if an Infant makes a Feoffment and Livery in Perſon, the Feoffment is good till it be defeated. 2 *Rol.* 2. *l.* 37, 40. 2 *Inſt.* 483.

## (B. 3.) May make an Exchange, Leaſe, &c.

So, if an Infant exchanges his Land, and occupies the Land given in Exchange; it ſhall be good till it be defeated: for it is tantamount to a Livery. *Co. L.* 51. *b.*

So, if an Infant makes a Leaſe for Years rendring Rent, it ſhall be good till it be defeated. *Co. L.* 308. *a.* 1 *Rol.* 729. *l.* 55.

## (B. 4.) A Statute, or Recognizance.

So, if an Infant acknowledges a Statute, or Recognizance; it ſhall be good till it be defeated. 10 *Co.* 43. *a.* *Bend. pl.* 123.

## (B. 5.) A Contract for Neceſſaries.

So, if an Infant makes a Contract for Neceſſaries, it binds him. *Co. L.* 172. *a.*

As, if he contracts to pay for his Eating and Drinking. *Co. L.* 172. *a.* *R. Jon.* 182.

Or, contracts generally for his Table, or with his Brewer for Drink. *R.* 1 *Rol.* 729. *l.* 6. *R. Lat.* 157. *Dy.* 104. *b. in Marg.*

So, if he contracts for neceſſary Apparel. *Co. L.* 172. *a.* 1 *Rol.* 729. *l.* 5.

Or, with a Taylor to make Cloaths. *R. Lat.* 157. *R. Jon.* 146. *Dy.* 104. *b. in Marg.*

And if he brings the Materials to the Taylor, there is no Need to aver that they were ſuitable to his Quality. *R. Lat.* 157.

So, if he contracts for Phyſick. *Co. L.* 172. *a.*

Or, for his Cure with a Surgeon, when he is wounded. *Pal.* 528.

Or, for Billets and Firing. 1 *Rol.* 729. *l.* 30.

Or, for his Schooling, or Inſtruction in Reading and Writing, &c. *Co. Co. L.* 172. *a. R.* 1 *Sid.* 112. *Mar.* 40.

Or, for All together, Diet, Apparel, Waſhing, Lodging, and Schooling. *R. Pal.* 528.

Or, in Conſideration that *A.* had expended 7 *l.* for Diet and Teaching, to pay 7 *l. R. Jon.* 182.

So a Contract, to pay ſo much *per Ann.* for his Diet and Schooling, is good. *R.* 1 *Rol.* 729. *l.* 35.

Or, if he be a Houſekeeper, to find Victuals, &c. for his Family. 1 *Sid.* 112.

And, upon ſuch Contract by an Infant, an *Aſſumpſit* lies. *R. Lat.* 169. *Jon.* 146. *Pal.* 528.

Or, if he gives a ſingle Bill for Money upon ſuch Contract, it binds him. 1 *Rol.* 729. *l.* 20. *Cro. El.* 920. *R.* 1 *Lev.* 86.

So, if he accounts upon ſuch Contract, an *Aſſumpſit* lies upon an *Inſimul Computaſſet*. *Pal.* 528. *Dub.*

The Court ſhall be Judge what Things are neceſſary. *Cro. El.* 583.

## (B. 6.) May do Things neceſſary.

*Vide Chancery,* (3 R. 3, &c.)

So an Infant may do Things neceſſary to be done for the Publick Good: As, he ſhall be ſworn to the King in the Leet, after the Age of 12 Years. *Co. L.* 172. *b.*

May do Homage. *Co. L.* 65. *b.*

And preſent to a Church to avoid a Lapſe. *Co. L.* 172. *a.*

So an Infant may do a Thing, to which he is bound or compellable by Law. *Co. L.* 172. *a.*

As, he may aſſign Dower. *Co. L.* 35. *a.*

So an Infant may maintain an Action againſt a Man of full Age upon mutual Promiſes of Marriage. *Dub. F, g.* 275.

So he ſhall maintain *Aſſumpſit*, Covenant, &c. upon mutual Promiſes or Covenants, tho' he himſelf is not bound by his Promiſe or Covenant on the other Part. *R.* 1 *Sid.* 41, 446. *Vide Action upon the Caſe upon Aſſumpſit*, (B. 14.)—*Covenant*, (B. 1.)

*A fortiori*, where the Money or Conſideration on the Part of the Infant is paid, and the Conſideration executed. *Cont. per Winch*, 1 *Rol.* 19. *l.* 15. *Acc. per Hob.* 77. *R.* 1 *Sid.* 41. *R.* 1 *Vent.* 51. 1 *Mod.* 25.

So, by Cuſtom, an Infant may make a Feoffment at the Age of 15 Years, which ſhall not be defeated.

Or, a Leaſe for Years. *Co. L.* 45. *b.*

But a Cuſtom, that an Infant may make a Feoffment, Grant, &c. when he can meaſure an Ell of Cloth, or count 12 Pence, is void. *Godb.* 14.

An Infant may hold courts as lord of a manor. Co. Litt.

## (C. 1.) What he cannot do.

*Vide Deviſe,* (H. 2.)

BUT an Infant cannot, generally, do an Act which requires an Oath: as, he cannot do Fealty. *Co. L.* 65. *b.*

Shall not be ſworn upon an Inqueſt. *Co. L.* 157. *d.* 172. *b.*

Cannot wage his Law. *Co. L.* 172. *b.*

Nor make his Law of *Non-ſummons*. *Co. L.* 172. *b.*

So he cannot do a Thing, which requires Skill and Ability: as, he cannot do the Service of Grand Serjeanty at the Coronation, but by Deputy. *Co. L.* 107. *b.*

So he cannot be Steward of a Manor, nor take a Grant of that Office in Poſſeſſion or Reverſion. *Co. L.* 3. *b.* *R.* 1 *Rol.* 731. *l.* 40. *Cro. El.* 637.

Neither can he be Bailiff or Receiver; for he has not Skill to render an Account. *Co. L.* 172. *a.*

But an Infant may take a Grant of the Stewardſhip of a Manor, *exercendum per ſe aut Deputatum.* *R. Cro. Car.* 279. *Vide Copyhold*, (R. 5.) *Vide Officer*, (B. 3.)

## (C. 2.) What Act by him is void.

So an Infant cannot do an Act apparently to his Prejudice: As, he cannot make a Leaſe, not rendring Rent; for ſuch Leaſe ſhall be void. 1 *Rol.* 729. *l.* 52. *R. Mo.* 105. *Semb. Cro. El.* 220.

So a Feoffment by an Infant, with Livery by Letter of Attorny, is void. *Perk. Grant* 13.

So, a Feoffment by himſelf to his Guardian in Socage, upon a Preſumption of Fraud. 1 *Rol.* 728. *l.* 32.

So, generally, every Deed by an Infant: As, a Grant of a Rent-charge, Annuity, *&c.* *Perk. Grant* 13. 3 *Mod.* 310.

A Surrender by him, of a Term for Years, to him in Reverſion or Remainder. *R.* 1 *Rol.* 728. *l.* 35. *Cro. Car.* 502.

Tho' the Surrender be by Acceptance of a new Leaſe upon the ſame Rent. 1 *Rol.* 738. *l.* 40. *R. Cro. Car.* 502.

Tho' the Deed be delivered with his own Hand. *Cont.* 2 *Rol.* 21. *l.* 10.

So, regularly, a Contract by an Infant, if it be not for Neceſſaries, ſhall be void. *Vide Ante*, (B. 5.)

And therefore, a Covenant by an Infant to bind himſelf Apprentice, does not bind, except when it is warranted by the Cuſtom of *London*, or by the *St.* 5 *El.* 4. *D. Cro. El.* 653. 2 *Cro.* 494. *Vide Juſtices of Peace*, (B. 55.)

And if he be an Apprentice purſuant to the Cuſtom or the Statute, he is not bound by a collateral Covenant. *Cro. El.* 653. *R. Cro. Car.* 179.

So a Promiſe by him or another, in Conſideration of Forbearance of a Debt due by him during his Infancy, is void. *Vide Action upon the Caſe upon Aſſumpſit*, (B. 1.—F. 8.)

So, if an Infant be a Mercer, *&c.* and buys Goods and Wares for the Uſe of his Shop, the Contract does not bind him. *R.* 1 *Rol.* 729. *l.* 15. *Dy.* 104. *b. in Marg.* *R.* 2 *Cro.* 494.

If he borrows Money, tho' he afterwards employs it for Neceſſaries. 1 *Sal.* 279.

Or, it was lent to him for Neceſſaries; for the Lender ought to provide them. *R.* 1 *Sal.* 386, 7.

So, if an Action be for Money lent and laid out, and the Defendant pleads, *within Age*, and the Plaintiff replies, *for Neceſſaries*; for he does not anſwer to the Loan. *R.* 5 *Mod.* 368.

So, if an Infant trades as a Merchant, and gives a Bill of Exchange, it ſhall be void. *R. Carth.* 160.

So, if an Infant gives an Obligation for a Sum due for Neceſſaries, it ſhall be void. *Co. L.* 172. *a.* *R. Cro. El.* 920. *Mo.* 679. *Adm.* 1 *Lev.* 86.

Or, accounts for Neceſſaries bought, and an Action upon *Aſſumpſit* is brought for Neceſſaries due upon Account. 2 *Rol.* 271.

So, if an Infant ſells Goods, the Sale is void; and if the Vendee takes them, Treſpaſs lies againſt him. 1 *Mod.* 137. *Vide Poſt*, (C. 3.)

If he loſes Money at Gaming, and the Winner takes it, *Trover* lies. *F. g.* 279.

(C. 3.) What,

(C. 3.) What, only voidable.

So, generally, every Purchaſe by an Infant is voidable. *Co. L.* 2. *b.* *Vide Ante*, (B. 1.)

And a Conveyance by Fine, Common Recovery, Feoffment, Exchange, *&c.* *Vide Ante*, (B. 2, 3.)

So, a Leaſe rendring Rent. *F,g.* 279. *Vide Ante*, (B. 3.)

A Statute, or Recognizance. *Vide Ante*, (B. 4.)

So, a Leaſe of a Copyhold without Licence, rendring Rent. *R. Lat.* 199.

So, if an Infant bails Goods to his own Uſe, it is only voidable; for Treſpaſs does not lie againſt the Bailee. 1 *Rol.* 730. *l.* 20.

So, if he ſells Goods, and delivers them with his own Hands, Treſpaſs does not lie againſt the Vendee. 1 *Mod.* 137. *Vide Ante*, (C. 2.)

(C. 4.) How avoided. By *Dum fuit infra Ætatem.*

If an Infant aliens in Fee, in Tail, or for Life, by Conveyance *in Pais*, he at his full Age, or his Heir, may avoid it by a Writ of *Dum fuit infra Ætatem.* *F. N. B.* 192. *G.* *Vide Dum fuit infra Ætatem*, (A.)

And it lies in the *Per*, in the *Per & Cui*, or in the *Poſt.* *F. N. B.* 192. *H.*

So it lies by the Heir, tho' he be within Age. *F. N. B.* 192. *I.*

So, if Huſband and Wife alien the Land of the Wife, both being Infants; the Wife, after the Death of her Huſband, may have a *Dum fuit infra Ætatem.* *F. N. B.* 192. *K.* *Co. L.* 337. *a.*

So, if they join in an Alienation where the Wife only was an Infant; after the Death of her Huſband, ſhe may have a *Dum fuit infra Ætatem*, as well as a *Cui in Vitâ.* *Dub. F. N. B.* 192. *L.*

But if Joint-tenants, Infants, join in an Alienation, they cannot join in a *Dum fuit infra Ætatem.* *F. N. B.* 192. *K.*

And if one of them aliens, the Survivor ſhall not have a *Dum fuit*, *&c.* for the Jointure was ſevered, but the Heir of the Alienor. *F. N. B.* 192.

(C. 5.) By Entry, *&c.*

So an Infant, or his Heir, may avoid his Feoffment, *&c.* by Entry, when the Entry is not tolled. *F. N. B.* 192. *G.*

If a Huſband within Age makes a Feoffment of the Land of his Wife, and dies, ſhe may enter. *Lit. S.* 633.

But if the Alienation was by Fine, Recovery, *&c.* which are Matters of Record, it muſt be avoided by Error.

So a Statute, Recognizance, *&c.* by an Infant, ſhall be avoided by *Audita Querela.*

So an Obligation, or other Deed, ſhall be avoided by Plea of *within Age*; for it cannot be ſaid, *Non eſt Factum.*

(C. 6.) How affirmed.

If an Infant continues in Poſſeſſion, after his full Age, of Lands demiſed to him during his Minority, he affirms the Leaſe. *R.* 1 *Rol.* 731. *l.* 45.

If an Infant affirms a Leaſe to him, after his full Age, he ſhall be liable to the Arrears of Rent incurred before. *R.* 1 *Rol.* 731. *l.* 50. 2 *Cro.* 320. 2 *Bul.* 69. *Godb.* 365.

So, during his Infancy, if he occupies by Virtue of the Leaſe. *R.* 2 *Bul.* 69.

(C. 7.) When it cannot be affirmed.

But if the Eſtate, *&c.* to the Infant was void, it cannot be affirmed by his Agreement at full Age: As, if a Leſſee, being an Infant, takes a new Leaſe, to commence at a future Day; this ſhall not be a Surrender, tho' at full Age it commenced, and he then entred and claimed by this new Leaſe. *R.* 1 *Rol.* 728. *l.* 40.

If

If he ſells his Term, the Sale ſhall not be affirmed; tho' he accepts Part of the Money after his full Age. *R. Dal.* 47.

(C. 8.) By whom avoided.

A Feoffment, or other Alienation by an Infant, may be avoided by himſelf.

Or, by any Privy in Blood; as, by his Heir. 8 *Co.* 42. *b.*

Tho' he be a ſpecial Heir who takes *per formam Doni*, and not Heir General. 8 *Co.* 43.

But it ſhall not be avoided by a Privy in Eſtate; as, by the Lord by Eſcheat. 8 *Co.* 43.

(C. 9.) At what Time. Within, or after full Age.

A Feoffment, or other Alienation *in Pais*, by an Infant, may be avoided by him or his Heir at any Time by Entry; be it within Age, or after his full Age. *Co. L.* 380. *b.*

Tho' it be by Indenture of Bargain and Sale inrolled. 2 *Inſt.* 673.

So a Judgment againſt an Infant may be avoided, before, or after his full Age, by Error, for that he appeared by Attorny, being an Infant, and not by Guardian: for it ſhall not be tried by Inſpection, but by the Country. *R.* 2 *Rol.* 573. *l.* 15, 25, 45.

(C. 10.) After full Age.

But a *Dum fuit infra Ætatem* does not lie by an Infant himſelf during his Nonage. *F. N. B.* 192. G. *Vide Ante*, (C. 4.)

(C. 11.) During his Nonage.

So Matter of Record, which ought to be tried by Inſpection, cannot be avoided after his full Age.

And therefore, a Fine or Recovery by an Infant ought to be reverſed by Error during his Nonage. 2 *Inſt.* 483, 4. 673. *Co. L.* 380. *b.* *Semb.* 1 *Lev.* 142.

Or, upon Examination and Inſpection of the Infant, it ſhall be vacated, *R. Skin.* 24.

And the Inſpection ought to be before his full Age. *Semb.* 2 *Cro.* 230.

So a Statute, or Recognizance ought to be avoided by *Audita Querela* during his Nonage. *Co. L.* 380. *b.* 2 *Inſt.* 673. *R.* 1 *And.* 25. *Bend.* 80.

But if he be inſpected during his Nonage, and it be recorded that he is within Age, the Judgment for Reverſal may be after his full Age. *Co. L.* 380. *b.*

When Trial ſhall be by Inſpection, and how, *Vide Trial*, (B. 1, &c.)

## (D) The Privileges of an Infant.

### (D. 1.) When the *Parol* demurs.

IN all Actions *Anceſtrel Rightful*, when a bare Right deſcends to the Infant from his Anceſtor, the *Parol* demurs till his full Age; without other Plea, except the Prayer of the Tenant that the *Parol* may demur; for he ſhall not be in Danger of a perpetual Bar of his Right for want of Knowledge. *R.* 6 *Co.* 3. *b.*

As, in a Writ of Right. 6 *Co.* 3. *b.*

In a *Formedon* in *Reverter*. 6. *Co.* 3. *b.*

Or, *Remainder*. 2 *Inſt.* 291. *Vide* 6 *Co.* 4. *a.*

So, in a *Dum fuit infra Ætatem*, or *Non compos*, by an Heir within Age; for a Right deſcends from the Anceſtor. 6 *Co.* 4. *a.* 2 *Inſt.* 291.

So an Extent ſhall not be againſt an Infant upon a Statute, or Recognizance, by his Anceſtor, during his Nonage.

And if it be againſt the Anceſtor, and the Sheriff returns, that he is dead, and the Heir within Age, he ſhall be aided by an *Audita Querela*. *Mo.* 37.

So, by the Common Law, in Actions *Anceſtrel poſſeſſory* (where the Anceſtor died in Poſſeſſion) by an Infant, if the Tenant pleads ſuch a Plea as ſhews that nothing, or only a bare Right, deſcended to the Infant, ſo that it is like to an Action *Anceſtrel Rightful*, he may pray that the *Parol* may demur; but not without ſuch Plea. *R.* 6 *Co.* 4. *a.*

As, in *Coſinage*, *Aiel*, *Beſaiel*, *&c.* till the *St. Glo.* 2. 6 *Co.* 4. *a.*

So, in a *Quid Juris Clamat*, if the Tenant alledges a Grant to be, without Impeachment of Waſt, and ſaving his Privilege, *&c.* 6 *Co.* 4. *b.*

So, in Waſt if he pleads ſuch a Deed: for the Infant cannot try the Deed, *&c.* 6 *Co.* 4. *b.*

So, in a *Formedon in Deſcender*, if the Tenant alledges a Feoffment from the Anceſtor, with Warranty and Aſſets. 2 *Inſt.* 291.

## (D. 2.) When not.

But, in an Action *poſſeſſory* by an Infant, the Tenant, tho' he pleads ſuch Plea, cannot have the *Parol* demur for his Nonage. *R.* 6 *Co.* 3. *b.*

Tho' it be a Real Action for Land which he has by Deſcent, and the Tenant pleads a Deed, or Warranty, of his Anceſtor: as, in a Writ of Right of a *Deforcement* to the Infant himſelf. 6 *Co.* 3. *b.*

In *Eſcheat*, *Ceſſavit*, Writ of Right upon a *Diſclaimer*, where he has the Seigniory in Poſſeſſion. 6 *Co.* 3. *b.*

In a *Mortd'anceſtor*, or other Aſſiſe; for the Jury appears the firſt Day, and it is *feſtinum remedium*. 6 *Co.* 4. *b.*

So now, by the *St. Glo.* 6 *Ed.* 1. 2. in *Mortd'anceſtor*, *Coſinage*, *Aiel*, or *Beſaiel*, the *Parol* ſhall not demur for the Nonage of the Demandant. 2 *Inſt.* 290. 6 *Co.* 4. *a.*

Nor, by the *St. W.* 1. 47. In a Writ of Entry *ſur Diſſeiſin* by the Heir of the Diſſeiſee. 2 *Inſt.* 258. 6 *Co.* 4. *b.*

Nor, in an Appeal by an Infant; tho' the Infant is not bound to fight, if the Defendant wages Battle. 2 *Inſt.* 320.

Nor, in a *Scire facias* to execute a Fine, whereby Land was rendred to his Anceſtor in Remainder, after the Death of *B.* now dead. *R. Mo.* 16.

## (D. 3.) When he ſhall have his Age.

So, generally, in all Real Actions, if the Tenant be within Age, and claims by Deſcent, he ſhall have his Age: as, in *Aiel*, *Formedon*, *&c.* 6 *Co.* 4. *b.*

If it be prayed in Aid, by Tenant for Life, of the Infant in Reverſion. 11 *H.* 6. 10. *b.*

So, in Error to reverſe a Fine, tho' the Plaintiff counterpleads, that ſhe claims Dower only. *Per* 3 *J.* 2 *Cro.* 392. *Mo. acc.* if the Infant be alſo Terretenant as well as Heir; otherwiſe not. *Mo.* 847. 1 *Rol.* 251, 323.

So, in Debt againſt the Heir, or a *Scire facias* upon a Judgment, Statute, or Recognizance. 3 *Co.* 13. *a.* *Co. L.* 290. *a.* 11 *H.* 6. 10. *b.* *Vide Pleader*, (2 E. 3.)

And

And by the *St. Mert.* 5. *Non current Uſuræ* againſt an Infant; and therefore, he ſhall not pay a *Nomine Pœnæ* for Rent, or upon an Obligation, or Recognizance. 2 *Inſt.* 88, 9.

But he ſhall not have his Age, in an Action for his own Wrong: As, in a *Ceſſavit* for his own *Ceſſer*. 6 *Co.* 4. *b.* *Co. L.* 380, *b.*

Nor, where he claims as Occupant upon a Grant of an Eſtate for Life to his Father and his Heirs. *R.* 1 *And.* 21.

Nor in *Eſtrepement* for Waſt; for it is in the Nature of Treſpaſs. 2 *Inſt.* 328.

Nor, in a *Nuper obiit*, which is to try the Privity of Blood. 6 *Co.* 4. *b.*

Nor, in *Error*, where he is not Terretenant. 47 *Ed.* 3. 8.

Nor, if prayed in Aid as Patron, in Annuity againſt the Parſon; for no Loſs falls upon the Patron. *R.* 11 *H.* 6. 10. *b.*

In Partition. 6 *Co.* 4. *b.* *Hob.* 179.

In Attaint, or Diſceit. 2 *Cro.* 393. 47 *Aſſ.* 9. 47 *Ed.* 3. 8.

In Dower. 2 *Cro.* 393.

In a *Quod ei deforceat* to avoid a Recovery by Default againſt a Woman intitled to Dower. 2 *Cro.* 393.

Nor, by the *St. W.* 1. 47. In a Writ of Entry *ſur Diſſeiſin*, againſt the Heir of the Diſſeiſor. 2 *Inſt.* 257.

Nor, by the *St. W.* 2. 40. In a *Cui in Vitâ*, or *Sur cui in Vitâ*. 2 *Inſt.* 455.

So by the *St. Marlb.* 52 *H.* 3. 6. In a Writ of Ward againſt the Heir, if the Heir be an Infant, he ſhall not have his Age. 2 *Inſt.* 112.

So, if a Woman recovers in Dower by Default, it is not Error that the Tenant was within Age. *R. Mo.* 848. *per* 2 *J. Gawdy cont. Cro. El.* 557, 567. *Mo.* 342.

## (D. 4.) When *Laches* does not prejudice him.

So *Laches*, generally, does not prejudice an Infant, in Reſpect of a prior Right or Entry: As, a Deſcent does not take away his Entry. *Co. L.* 245. *b.* *Vide Diſcent*, (D. 7.)

A Fine and Nonclaim, by the Common Law, do not bar his Right. *Pl. Com.* 359. *Vide Fine*, (K. 3, 4.)

Nor a Warranty bar his Entry, if he was within Age at the Deſcent of the Warranty. *Co. L.* 380. *b.*

So, where there is a Condition annexed to the Eſtate, that for Nonpayment the Rent ſhall be double; if the Infant does not pay, it ſhall not be double; for by the *St. Mert.* 5. *Non current Uſuræ contra aliquem infra Ætatem exiſtentem.* *Co. L.* 246. *b.* 2 *Inſt.* 88, 9.

So, where an Infant is in Ward to the King, he does not forfeit his Eſtate by Breach of a Condition. *Hard.* 16.

But an Infant ſhall be liable for the Breach of a Condition in Law annexed to his Eſtate. *Co. L.* 233. *b.* *Hard.* 11.

So he ſhall be ſubject to a Charge, or Penalty: As, for Waſt, or *Ceſſer* of Rent for two Years. *Pl. Com.* 364. *b.*

So he ſhall be ſubject for a Condition in Fact annexed to his Eſtate. *Co. L.* 246. *b.* *R.* 2 *Lev.* 21. *Ray.* 236. 1 *Mod.* 86. 1 *Vent.* 199.

So, he ſhall loſe his Goods if they are waived, ſtrayed, or wrecked, *&c.* tho' an Infant. *Pl. Com.* 364. *b.*

So Lapſe incurs, if an Infant does not preſent to a Church within ſix Months. *Co. L.* 246. *a.* *Vide Eſgliſe*, (H. 11.)

So

So a Villein, who continues in *Antient Demeſne* for a Year and a Day without Claim of his Lord, ſhall be enfranchiſed; tho' the Lord be an Infant. *Co. L.* 246. *a.*

So an Appeal is loſt if it be not commenced within a Year and a Day; tho' the Heir be an Infant. *Co. L.* 246. *a.*

A Lord ſhall not enter for *Mortmain*, if he does not enter within a Year, tho' an Infant. *Pl. Com.* 364. *b.*

Nor ſhall he enter upon the Purchaſe of his Villein, if he does not enter before his Alienation; for he has no Title till Entry. *Pl. Com.* 364. *b.*

So a Deſcent from the King binds an Infant. *Co. L.* 246. *a.*

And a Deſcent from a Common Perſon to an Heir, who is thereby remitted; for a Remitter operates againſt an Infant. *Co. L.* 246. *a.*

So an Infant ſhall be charged for a Treſpaſs done by him.

So an Infant of 17 Years of Age ſhall be charged for malicious Words. *Noy* 129.

## Diſcontinuance by an Infant.

*Vide Diſcontinuance*, (C. 6.)

## Limitation of Action by an Infant.

*Vide Temps*, (G. 16.)

## Action and Suit, by, and againſt an Infant.

*Vide Chancery*, (3 R. 1, 2.)—*Pleader*, (2 C. 1, 2.—2 E. 1, &c.—2 G. 3.—2 W. 22.—3 L. 13.)

## Maintenance of Infants.

*Vide Chancery*, (3 R. 6.)

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# ENQUEST.

## (A) When a Trial ſhall be by Inqueſt.

### (A. 1.) If it be a mere Matter of Fact.

AS to the Antiquity, Number, Qualification, Exemption, and Challenge of Jurors, *Vide Challenge*.

What Matter ſhall be found by a Verdict, and what Verdict ſhall be good, or not, *Vide* in *Pleader*, (S. 1, &c.)

Where the Trial is to be of a Matter of Fact, regularly it ſhall be tried by an Inqueſt of the ſame Country. 9 *Co.* 25. *a.* *Dal.* 74, 5.



(A. 2.) Tho'

(A. 2.) Tho' it relate to a Matter triable by Certificate, Record, &c.

So, if it relates to a Spiritual Thing when the Matter of Spiritual Conuſance is not directly in Iſſue, it ſhall be tried by the Country, and not by the Certificate of the Biſhop. *Vide Certificate*, (A. 2.)

Or, if it relates to the Circumſtances of a Thing upon Record, which do not appear upon the Record; as, if the Iſſue be, whether a Tenant in a *Per quæ Servitia* held of the Conuſor at the Day of the Note of a Fine. 2 *Rol.* 574. *l.* 13.

In Eſcape againſt a Sheriff, who returned, *Non eſt inventus*; if the Iſſue be, whether he was taken by the Sheriff. 2 *Rol.* 574. *l.* 27.

If the Iſſue be, whether an Action be pending by Covin; for the Covin is the Principal. 2 *Rol.* 574. *l.* 35.

Whether the King preſented upon a Judgment, or Avoidance; tho' the King's Preſentment is upon Record in *Chancery*. 2 *Rol.* 574. *l.* 40.

If the Iſſue be, at what Time a Patent was inrolled. 2 *Rol.* 575. *l.* 17.

Whether the King was ſeiſed at the Time of a Patent. 2 *Rol.* 575. *l.* 22.

Whether a Plaint was levied in an Inferior Court according to the Cuſtom. *R.* 2 *Rol.* 578. *l.* 15. *Hut.* 20.

If the Iſſue be, whether a Statute Staple was duly ſealed. *R. Cro. El.* 233.

(A. 3.) Tho' mixed with them.

If it be mixed with Matter of Record, or of another Nature, it ſhall be tried by the Country. 1 *Sid.* 314.

So, if it be, whether a Church is void by Ceſſion, Deprivation, or Reſignation, &c. for the Avoidance is Temporal, and the firſt Thing to be inquired of. *Dal.* 74.

## (B) When not.

WHEN Trial ſhall be by the Certificate of the Biſhop or Ordinary, *Vide* in *Certificate*, (A. 1, &c.)

When, by the Mouth of the Recorder of *London*, *Vide* in *Certificate*, (B.)

When, by Certificate of the Marſhal, *Vide* in *Certificate*, (C.)

When, by Battle, *Vide* in *Battle*, (A. 1, 2.)

When, and how by the Grand Aſſiſe, *Vide* in *Battle*, (A. 3.)

When, by Inſpection, *Vide* in *Trial*, (B. 1, &c.)

When, by the Record, *Vide* in *Trial*, (A.)

When, by Witneſſes, or the Examination of the Juſtices, *Vide* in *Trial*, (B. 4, 5.)

When, by the Peers of Parliament, *Vide* in *Dignity*, (F. 1, 2.)—*Parliament*, (L. 16, &c.)

## (C) Inqueſt, how ſummoned.

### (C. 1.) By *Venire facias.*

(C. 1.) When it iſſues.

IN the Courts of *Weſtminſter*, after Iſſue joined, a Writ of *Venire facias* ſhall be awarded, *quod venire facias* 12 *bonos & legales Homines de Vicineto, &c. ad faciendum Jurat', &c.*

By the Common Law it was returnable at *Weſtminſter*.

And now, ſince the *St. W.* 2. 30. which gives the *Niſi Prius*, it ſhall be returnable at *Weſtminiſter, niſi tales* (*viz.* the Juſtices of Aſſiſe) *prius tali Die & Loco venerint, &c.*

Upon which Statute the Return of the *Venire facias* was at *Weſtminſter* at a Day after the Aſſiſes; but becauſe, by the *St.* 42 *Ed.* 3. 11. no Inqueſt (except in Aſſiſe or Gaol-Delivery) ſhall be taken before the Names of the Jurors be returned in Court, the *Venire facias* ſhall be returned before the Day of Aſſiſe with the Panel of the Jurors annexed, and upon that a *Diſtringas* or *Habeas Corpora* goes, returnable at a Day after the Aſſiſes, *niſi* ſuch a one *prius, &c.*

And it ſhall be entred upon the Roll, that the Jury made Default at the Return of the *Venire facias.*

If ſeveral Iſſues between the ſame Parties ariſe within the ſame County, the Court will grant but one *Venire facias.* 2 *Cro.* 550, 551.

And ſeveral Writs of *Venire facias* cannot afterwards be granted, tho' nothing be done upon the firſt.

So ſeveral Iſſues by ſeveral Defendants may be tried by one *Venire facias.* *R. Hob.* 37. 2 *Rol.* 667. *D.*

Tho' the Iſſues ariſe in ſeveral Places, if the *Venire facias* be from all the Places. *R. Hob.* 37. 2 *Rol.* 667. *D.* *Vide Poſt*, (C. 3, 4.)

But where there are ſeveral Iſſues, there may be ſeveral Writs of *Venire facias.* *Hob.* 37.

(C. 2.) To whom it ſhall be directed.

A *Venire facias*, generally, ſhall be directed to the Sheriff.

If a Jury be ſtruck by the Maſter of the Office upon an Order of the Court, a Liſt of 48 ſhall be delivered, and 12 put out by the Attorny of each of the Parties, or (if the Attorny of either, upon Notice be abſent) by the Maſter. 1 *Sal.* 405.

But if the Iſſue ariſes within the Palace, the *Venire facias* ſhall be to the Warden of the Palace. 2 *Rol.* 667. *E.*

If the Array be quaſhed for Favour, or Default of the Sheriff, it ſhall be awarded to the Coroners.

If, for Favour in the Under-Sheriff, it may be to the Sheriff, *ita quod Subvicecomes ſe non intromittat.* *R.* 2 *Rol.* 669. *l.* 35.

If, for Partiality or Default in one of the Sheriffs of *London*, it ſhall be to the other alone. *R.* 1 *Sal.* 152. 4 *Mod.* 65. *Sho.* 329.

So, if one of the Coroners be not indifferent, it ſhall be to the others, *ita quod ille ſe non intromittat.* *R.* 2 *Rol.* 670. *l.* 20.

If all the Coroners be not indifferent, it ſhall be to two Eliſors choſen by the Court.

Or, by Conſent of the Parties, to the two Juſtices of Aſſiſe. 10 *H.* 4. 5.

So, if there be Cauſe of Challenge to the Sheriff, the Plaintiff may make Suggeſtion upon the Roll, and if the Defendant confeſſes it, a *Venire facias* ſhall be immediately awarded to the Coroners. *Dy.* 367. 2 *Rol.* 668. *G. H.* *Co. L.* 157. *b.*

If the Defendant does not allow the Cauſe, he cannot afterwards challenge the Array for it. 9 *Ed.* 4. 6. *Co. L.* 157. *b.*

If Proceſs be once awarded to the Coroners, all ſubſequent Proceſs ſhall be to them. *Co. L.* 158. *a.* *R. Mo.* 356.

Tho' there be a new Sheriff afterwards. *Co. L.* 158. *a.*

So, if Proceſs be once to Eliſors, all afterwards (except the *Diſtringas*) ſhall be to them. 2 *Rol.* 670. *l.* 45, 47.

But a Defendant cannot make Suggeſtion upon the Roll, and have Proceſs upon it to the Coroners; for he may challenge the Array, and the Delay ſhall be intended for his Advantage.

So Proceſs does not go to the Coroners, where one of the Sheriffs only is Party or Partial; for it ſhall be awarded to the other. *R.* 4 *Mod.* 65.

So, if Proceſs be awarded to the Sheriff, and not taken, but entred to make a Continuance, it may afterwards be awarded to the Coroners. *R.* 2 *Cro.* 36.

A *Venire facias* is ſufficient, tho' it be *ad triandum Exitum inter A. et B.* when there are ſeveral Iſſues: for it is *Nomen collectivum.* *R.* 2 *Rol.* 667. *C.* (C. 3.) What Form is ſufficient.

But by the *St.* 35 *H.* 8. 6. The *Venire facias* to try the Iſſue in the Courts at *Weſtminſter*, ſhall be in this Form: *Precipe quod Ven. fac.* 12 *liberos & legales Homines de Vicineto de B. quorum quilibet habeat* 40 *s. terræ tent' reddit' per Ann' ad minus per quos Rei veritas melius ſciri poterit, & qui nec, &c.*

By the *St.* 27 *El.* 6. *Quorum quilibet habeat* 4 *l.*—By the *St.* 4 & 5 *W. & M.* 24. 10 *l.* * and in *Wales* 6 *l.*

By the *St.* 4 & 5 *An.* 16. 12 *Homines de Corpore Comitatûs.*

* (*Vide* 3 *Geo.* 2. *ch.* 25. and 4 *Geo.* 2. *ch.* 7.)

The Form of the Return is, *Executio iſtius Brevis patet in quodam Panello huic Brevi annex'*, and then annex in a Panel the Names of the Jurors. *Kit.* 265. *b.* (C. 4.) How it ſhall be returned.

And, tho' the Writ ſays 12 *probos & legales Homines*, by antient Uſage the Sheriff ought to return 24. *Co. L.* 155. *a.*

By the *St. W.* 3. 13 *Ed.* 1. 38. Sheriff ſummoning in Aſſiſes (unleſs in Grand Aſſiſe) more than 24, ſhall render Damages to the Party, and be amerced to the King.

So, by the Common Law, the Sheriff ought to give the proper Chriſtian Name, Surname, and Addition of each Juror.

By the *St. of York*, 12 *Ed.* 2. 5. he ought to put his Name to every Return.

By the *St.* 27 *El.* 7. he ſhall not make Return of any Juror without the Addition of Place of Abode, or other Addition by which he may be known.

There ought to be 15 Days between the *Teſte* and the Return. 2 *Inſt.* 567. *Vide Proceſs*, (B.)

But now, by the *St.* 18 *El.* 14. It ſhall be aided after Verdict, if the Return be inſufficient or imperfect; and by the *St.* 21 *Jac.* 13. If there be no Return, when the Panel of the Names of the Jurors is annexed to the Writ; or if the Name of the Sheriff is not put to the Return, when the Writ is returned by the proper Officer. *Vide Amendment*, (G. 1, 2.)

And the Court will not direct the Return of the *Venire facias* to be filed, unleſs the Plaintiff pleaſes. 3 *Mod.* 245.

From what Place a Jury, or Inqueſt ſhall come, *Vide* in *Amendment*, (H. 1, 2.)

(C. 5.) By

### (C. 5.) By *Habeas Corpora.*

If the Jury make Default at the Return of the *Venire facias* in *C. B.* an *Habeas Corpora Juratorum* ſhall be awarded.

### (C. 6.) By *Diſtringas Juratores.*

If the Jury make Default at the Return of the *Venire facias* in *B. R.* a *Diſtringas Juratores* ſhall be awarded.

So, in *C. B.* if the Jury do not appear at the Return of the *Habeas Corpora.*

A *Diſtringas* is awarded by the Court, at the Return of the *Venire facias*, and ought to be teſte'd the ſame Day; otherwiſe it is without Warrant, and makes a Diſcontinuance. *Mod. Ca.* 269.

And the Want of a good *Teſte* cannot be amended. *R. Mod. Ca.* 269, 287.

## (D) How ſworn.

AFTER a full Inqueſt appears, they ſhall be ſworn *ad Veritatem dicend'*. And if it be entred, *quod electi triati & jurati ſuper Sacramenta ſua dicunt, &c.* omitting, *ad Veritatem de premiſſis dicend'*; it will be a material Defect, which cannot be amended. *R.* 2 *Cro.* 119.

So, if it be ſaid *quod Tales, &c. ad Veritatem, &c. jurati*, without ſaying, *cum aliis jurati, &c. R.* 2 *Cro.* 207.

## (E) When an Inqueſt ſhall be taken by Default.

IN Perſonal Actions, where the Plea is not a Confeſſion of the Action, as in Debt, *&c.* if a full Inqueſt appears, but the Defendant does not appear; the Inqueſt ſhall be taken by Default. 1 *Rol.* 586. *l.* 31.

So, in Ejectment.

And he may then confeſs Leaſe, Entry, and *Ouſter*, and pray the Nonſuit of the Plaintiff.

So, in an Aſſiſe. 1 *Rol.* 586. *l.* 15. 1 *Sal.* 83.

So, in a Real Action; if the Iſſue be not upon the Realty, but in Point of Damages only. 1 *Rol.* 586. *l.* 5.

Or, if upon a Default before Iſſue, Proceſs iſſues.

So, in Treſpaſs, tho' he pleads a Releaſe, which is denied; for the Damages are uncertain. 1 *Sal.* 216.

In Debt, if the Defendant pleads *Non eſt factum*; for that denies the Cauſe of Action. 1 *Sal.* 216.

So, if a full Inqueſt does not appear, it may be taken by Default; for the Parties are demandable before the Inqueſt. *Dub. Dy.* 265. *a.*

But in a Real Action, where the Iſſue is upon the Realty, and the Tenant at *Niſi Prius* makes Default, the *Poſtea* ſhall be marked, and a *Petit Cape* ſhall iſſue, and if the Tenant cannot ſave his Default, and the Demandant does not waive it, final Judgment ſhall be againſt him. 1 *Rol.* 585. *l.* 35. *Mod. Ca.* 4.

So, in a Writ of *Meſne*, Cuſtoms and Services, *&c.* if the Seigniory be denied. 1 *Rol.* 584. *l.* 37, 40.

In an Appeal of Rape, *Capias*, *Alias*, *Pluries*, and *Exigent* ſhall Iſſue. 1 *Sal.* 217.

So, in a Perſonal Action, where the Plea amounts to a Confeſſion of the Action, if the Plaintiff does not waive it, Judgment ſhall be upon the Default, and no Inqueſt taken: as, if the Defendant pleads a Releaſe to a Debt or Demand certain, and the Deed is denied. 11 *H.* 4. 32. *Bro. Defalt.* 4, 9, 20. 1 *Rol.* 586. *l.* 37. 1 *Sal.* 216.

So, in *Detinue*, if the Garniſhee makes Default. 1 *Rol.* 586. *l.* 47.

In a *Quid Juris clamat*, if the Defendant claims the Fee. 1 *Rol.* 587. *l.* 2.

In a *Quare Impedit*, the Inqueſt ſhall not be taken by Default, but a Writ awarded to the Biſhop. 1 *Rol.* 587. *l.* 10.

## (F) How the Inqueſt ſhall behave themſelves.

AFTER the Evidence given, the Jury ought to continue together till they agree of their Verdict, without Eating, Drinking, Fire, Candle, or Speaking with any one, except the Bailiff to know if they be agreed. *Co. L.* 227. *b.* 15 *H.* 7. 1, 2. *Vide Pleader.*

But if the Jury ſeparate on Account of a great Tempeſt, they ſhall not be amerced. *Pl. Com.* 13. *b.* 15 *H.* 7. 1. *b.* 14 *H.* 7. 30.

For more concerning Inqueſt, *Vide Copyhold*, (R. 11.)—*Courts*, (P. 12.)—*Leet*, (F.)

# ENTERPLEADER.

*Vide Chancery*, (3 T.)

# ENTRY.

*Vide Abatement*, (H. 48.)—*Enfant*, (C. 5.)—*Eſtates*, (G. 14.)—*Execution*, (A. 1.)—*Forceable Entry.*—*Pleader*, (2 S. 20.—2 W. 50.)—*Rent*, (D. 3.)

## Entry for a Condition broken.

*Vide Condition*, (O. 3, &c.)

## Entry to avoid a Fine.

*Vide Claim*, (B. 1, &c.)

## Entry for a Forfeiture.

*Vide Forfeiture*, (A. 6, 7, 8.)

## Entry tolled.

*Vide Diſcent*, (D. 1, &c.)

## Writs of Entry.

*Vide Dum fuit infra Ætatem, per Totum.* —— *Pleader*, (3 A. 1, &c.)

# EQUITY.

*Vide Chancery, per Totum.*—*Courts*, (D. 7.—O. 5.)—*Diſmes*, (M. 13, &c.)—*Parliament*, (R. 13, &c.)

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# ERROR.

## (A) What Things may be aſſigned for Error.

IN what Court, by whom, againſt whom, and in what Manner Error ſhall be brought. *Vide* in *Pleader*, (3 B. 1, &c.)

When it ſhall be a *Superſedeas*, and how the Record ſhall be removed, *Vide* in *Pleader*, (3 B. 12, 13.)

Errors how aſſigned, and the Proceedings thereupon, *Vide in Pleader*, (3 B. 14, &c.)

What Pleas to Error, good. *Vide* in *Pleader*, (3 B. 18, 19.)

How to proceed upon Errors in Parliament, *Vide* in *Parliament*, (L. 1, &c.)

A Writ of Error is grantable in all Civil Actions *ex Debito Juſtitiæ*. *R. Sal.* 504.

But in Criminal Caſes it ſhall be *ex Gratia*, where a Statute does not provide for it: and therefore, if the Attorny General does not allow it, *Chancery* will not direct it to be made out. *R. Eq. Ca. Ab.* 414.

And all Errors in Proceſs againſt Parties or Jurors, or Award of Proceſs, or in the Record, Verdict, Judgment, or Execution may be thereby redreſſed.

## (B) Error upon an Indictment; How it ſhall be brought.

IF Error be upon an Indictment at the Aſſiſes or Quarter-Seſſions, the uſual Courſe is to remove the Indictment by *Certiorari* into the Crown-Office, and afterwards to ſue a Writ of Error *coram nobis*. *Mod. Ca.* 178.

Or, it may be removed directly by Writ of Error: for both Ways are good. *Mod. Ca.* 178.

If Error be brought upon an Indictment, and the Indictment removed, a Rule may be given in the Crown-Office, that the Indictee aſſign his Errors.

If he does not, there ſhall be a peremptory Rule upon Motion; and if then he does not, he ſhall be nonſuited, and Execution awarded. *Mod. Ca.* 178.

(C) The

## (C) The Judgment in Error.

WHAT ſhall be done by the Court if the Judgment be affirmed or reverſed, *Vide* in *Pleader*, (3 B. 20.)

When there ſhall be Reſtitution, *Vide* in *Pleader*, (3 B. 20.)

If Judgment be in *C. B.* that a Plea in Abatement is good, and that the Writ ſhall abate, and that Judgment be reverſed in *B. R.* the Court of *B. R.* ſhall proceed upon the ſame Writ.

So, in Error upon a Judgment in *Wales* that a *Quod ei deforceat* does not lie, if Judgment be reverſed, *B. R.* ſhall proceed upon the ſame Declaration. *Jon.* 381.

## (D) When Error ſhall be avoided by Entry or Plea, without a Writ of Error.

WHEN a Man ſhall avoid an Outlawry by Plea, or Error, *Vide* in *Utlagary*, (C. 2, &c.) *Vide Pleader*, (2 W. 39.)

If a Judgment be void, it may be avoided by Plea, without a Writ of Error.

So, if the Party cannot have Error, he may avoid it by Plea; As, where he is a Stranger to the Judgment: As, if an Adminiſtrator pleads a Judgment againſt him at the Suit of *B.* and no Aſſets *Ultra, &c.* the Plaintiff by Replication may ſhew, that the Judgment was null, and how. *R.* 2 *Mod.* 308.

But if a Judgment is only voidable, the Party ſhall not avoid it without Writ of Error; as, if in a *Cui in Vitâ* the Tenant dies, and afterwards Judgment is againſt him, which is erroneous, and Execution is ſued againſt the Heir; he ſhall not avoid the Judgment in Aſſiſe, without Error. 1 *Rol.* 742. *l.* 12.

So, in a *Scire facias* by an Executor, upon a Judgment in Ejectment by his Teſtator againſt *B.* Execution ſhall not be avoided, nor Judgment ſtayed, by ſaying, that the Tenant died *pendente Lite:* for he ought to avoid it by Error. 1 *Rol.* 742. *l.* 18.

So, Error in the Principal Judgment, is no Plea in a *Scire facias* againſt the Heir, or Bail. 1 *Rol.* 742. *l.* 26, 30. *Vide Bail*, (R. 3, &c.)

Nor, in Debt upon an erroneous Judgment. 1 *Rol.* 742. *l.* 35.

So, if a Fine or Recovery is had againſt an Infant, it cannot be avoided by Entry, without Error. 1 *Rol.* 742. *l.* 50. *Vide Enfant*, (C. 5.—*Fine*, (H. 3, &c.)

## Coſts in Error.

*Vide Coſts*, (B.)

## Error in the Exchequer Chamber.

*Vide Courts*, (D. 6.)

## Error to avoid a Fine.

*Vide Fine*, (H. 3, &c.)

**Error from** Ireland.
*Vide Ireland*, (G.)

**Writ of Error not amendable.**
*Vide Amendment*, (2 C. 4.)

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# E S C A P E.

## (A) Eſcape in Criminal Caſes.

### (A. 1.) Voluntary.

BY the *St.* 5 *Ed.* 3. 8. Indictees and Appellees of Felony ſhall be ſafely kept.

And therefore, if a Gaoler permits a voluntary Eſcape, it ſhall be Felony. 2 *Inſt.* 52. *H. P. C.* 114.

If the Priſoner was committed for High Treaſon, it ſhall be Treaſon. 2 *Inſt.* 52. *H.* 114.

So a voluntary Eſcape by a Gaoler ſhall be Treaſon or Felony, tho' he was only a Gaoler *de Facto*, and not *de Jure*. 2 *Inſt.* 592. *H.* 114.

So, by any Stranger of one in his Cuſtody. *H. P. C.* 112.

But it will not be Felony, if the Priſoner be permitted to eſcape, when no Felony was committed. *Bro. Eſcape* 8. 2 *Inſt.* 592.

Or, if he was not committed for Felony: As, if *A.* receives a Felon, knowing of the Felony, and afterwards permits his Eſcape. *Sta.* 32, 3.

Or, if it was not a Felony at the Time of the Eſcape: As, if *A.* gives a mortal Wound to *B.* upon which he is arreſted and voluntarily permitted to eſcape, and afterwards *B.* dies; it is not Felony. *Sta.* 33. *a.*

So, if the Priſoner was not lawfully committed to his Cuſtody: as, if there was not a lawful Warrant. 2 *Inſt.* 592.

And therefore, a Gaoler ſhall not be tried for an Eſcape, till the Priſoner be attainted upon Indictment or Appeal. *Semb. cont.* 2 *Inſt.* 52. *Acc.* 2 *Inſt.* 592. *H.* 110, 115. *Cont. Dy.* 99. *a*, that it ſhall be Felony, tho' the Priſoner be not indicted.

So a voluntary Eſcape of one committed for petit Larceny, or for a Death *per Infortunium*, or *Se defendendo*, is not Felony. *Crompt.* 39. *a.*

### (A. 2.) Negligent.

So by the *St. Wint.* 13 *Ed.* 1. 4. If Murder or Homicide be done in a Walled Town, *&c.* and the Offender eſcapes, the Town ſhall be amerced. 7 *Co.* 7. *a.* So *London* was. *Cro. Car.* 252.

By the *St.* 5 *Ed.* 3. 8. a Marſhal who permits the Eſcape of Indictees or Appellees in his Cuſtody, by Bail or without Bail, ſhall be impriſoned for half a Year, and ranſomed at the Will of the King.

So,

So, if any Gaoler permits the Eſcape of any in his Cuſtody, thro' Neglect, he ſhall be fined. *H. P. C.* 113. *Sal.* 272.

Tho' it be a Stranger, who has another in his Cuſtody, tho' he is not a Gaoler *de Jure*. *H. P. C.* 112.

So the Priſoner himſelf may be indicted for an Eſcape, tho' it be with the Conſent of the Gaoler. *R. Cro. Car.* 210.

If a Gaoler bails a Perſon not bailable, it ſhall be a negligent Eſcape. *H. P. C.* 113.

An Indictment for an Eſcape is good until a Pardon or Diſcharge be ſhewn; for it ſhall not be intended. *Sal.* 272.

So it will be good for an Eſcape of one in his Cuſtody, tho' it does not appear how he came into his Cuſtody. *R.* 2 *Rol.* 146. (*Semb. cont. Sal.* 272.)

The uſual Fine for an Eſcape of a Perſon attainted is 100 *l.* *H. P. C.* 113.

Of a Perſon indicted, before Conviction, is 5 *l.* *H.* 113.

Of a Priſoner not indicted, at the Diſcretion of the Court. *H.* 113.

By the *St.* 19 *H.* 7. 10. a Fine for a negligent Eſcape of any indicted for High Treaſon ſhall be 100 Marks at leaſt; if committed for Suſpicion of High Treaſon 40 *l.* if indicted for Murder or Petit Treaſon 20 *l.* if for Suſpicion of theſe, or indicted for other Felony 10 *l.* if not indicted 5 *l.*

By the *St.* 31 *Ed.* 3. 4. The Eſcape of Thieves, Felons, *&c.* ſhall be judged by any of the King's Juſtices.

By the *St.* 1 *R.* 3. 3. Juſtices of Peace may inquire of Eſcapes of Felons, in their Seſſions.

So the Leet may inquire; tho' it cannot puniſh the Eſcape. 2 *Inſt.* 165. *Vide Leet*, (L. 2.)

If the Gaoler be not ſufficient, the Sheriff ſhall anſwer for his Neglect. *H.* 113.

But by the *St. W.* 1. 3 *Ed.* 1. 3. Nothing ſhall be demanded by the Sheriff, or other, for the Eſcape of a Thief or Felon, till it be adjudged by the Juſtices Errant.

And this ſeems to be the Common Law. 2 *Inſt.* 165.

But *B. R.* is not within this Statute. 2 *Inſt.* 166.

So a Gaoler ſhall not anſwer for a negligent Eſcape of one not lawfully in his Cuſtody.

And therefore, the Indictment ought to ſhew a lawful Commitment to his Cuſtody. *Semb.* 5 *Mod.* 415.

So a Gaoler ſhall be excuſed for a negligent Eſcape, if he retakes upon freſh Purſuit. *H. P. C.* 114. *Dub.* 6 *H.* 7. 11. 10 *H.* 7. 25, 28.

So the Sheriff ſhall not anſwer criminally for a negligent Eſcape of the Gaoler. *Sal.* 272.

## (B) Eſcape in Civil Caſes.

### (B. 1.) What Remedy for it.

BY the Common Law, the Sheriff, and every Gaoler ought to keep Perſons in Execution *in Salvâ Cuſtodiâ*. 3 *Co.* 44.

And if ſuch Priſoner eſcapes, an Action upon the Caſe lies againſt him. 2 *Inſt.* 382. *R.* 1 *Rol.* 99. *l.* 10, 15. 2 *Cro.* 289. 2 *Lev.* 159.

So, by the *St. W.* 2. 13 *Ed.* 1. 11. *Si Vicecomes, &c. per Repleg', &c. permittat* (an Accountant) *ſine Aſſenſu Domini ire ad largum, reſpondeat de Damnis, & ſi non habet, &c. reſpondeat Superior.* *F. N. B.* 130. *B.*

So, by the *St. de Merc.* 13 *Ed.* 1. The Gaoler ſhall receive the Conuſor, and anſwer for his Body, or the Debt, and if he has not, *&c.* the Superior.

So, by the *St.* 1 *R.* 2. 12. If the Warden of the Fleet permits a Priſoner to go at large without the King's Writ, or Agreement of the Party, Debt lies againſt him.—Debt, or Action upon the Caſe. *R. Cro. El.* 767.

And by the Equity of theſe Statutes Debt lies in all Caſes, for an Eſcape, againſt a Gaoler. 2 *Inſt.* 382. *R. Pl. Com.* 36. *b.* *Adm.* 2 *Lev.* 159. 15 *Ed.* 4. 20.

And may be ſued by Writ or by Bill of Debt. 2 *Inſt.* 382. *Dub. Pl. Com.* 38. *a.* 42 *Ed.* 3. 13. *a.*

It may be againſt the Mayor of the Staple for an Eſcape of one in his Cuſtody in Execution. 9 *H.* 6. 19.

Debt lies for an Eſcape againſt a Gaoler within the *Cinque-Ports.* 30 *H.* 6. 6.

So, for an Eſcape in a Court of *Pypowders.* 2 *Inſt.* 382.

So, for the Eſcape of one committed by Commiſſioners of Bankrupts. *R. Mo.* 834. *Vide Poſt*, (C.)

So, if two are in Execution, and one of them eſcapes. 1 *Rol.* 205.

If Huſband and Wife are in Execution upon a Judgment againſt both, and the Wife eſcapes. *Dub.* 1 *Rol.* 204.

By the *St.* 8 & 9 *W.* 3. 27. If the Keeper of a Priſon take Money or Security to permit or aſſiſt an Eſcape, he forfeits 500*l.* and his Office, and ſhall be ever incapable of a like Office.

If Judgment be againſt the Marſhal of *B. R.* or Warden of the Fleet for an Eſcape, or his Deputy, on Oath by the Party, that the Judgment was without Fraud and for a real Debt, the Court on Motion ſhall ſequeſter the Profits of the Office for Satisfaction.

And Execution or Sequeſtration ſhall not be ſtayed by Writ of Error, unleſs ſpecial Bail be given.

And the Inheritance of the Marſhalſea, or Fleet ſhall anſwer for Eſcapes or Miſdemeanors by themſelves or Deputies, and ſhall be extended for that Purpoſe.

So, by the *St.* 1 *An. St.* 2. *ch.* 6. The Sheriff ſhall be liable for an Eſcape of any committed to him on an Eſcape Warrant.

So an Action lies againſt a Gaoler for an Eſcape of one committed upon Proceſs of the Admiralty. *R. Sav.* 11, 15.

Or, upon a *Capias Utlagatum*; and the Plaintiff ſhall recover the whole Debt in Damages. *R. Mo.* 641. *R.* 5 *Mod.* 200.

An Action lies for an Eſcape, tho' the Gaoler be an Infant, or *Feme Covert.* 2 *Inſt.* 382.

## (B. 2.) Againſt whom.

*Vide Poſt*, (B. 3.)

The Action for an Eſcape ſhall be brought againſt him, who has the Cuſtody of the Gaol.

Tho' he has it *de Facto* only, and not *de Jure.* 2 *Inſt.* 381, 2.

As, it ſhall be againſt the Sheriff, not againſt his Deputy: as, the Gaoler who takes Care of the Priſon in the County. 2 *Inſt.* 382. *R.* 1 *Rol.* 94. *l.* 30. *Semb. Hard.* 34.

Or, the Serjeant, who makes the Arreſt. *R.* 1 *Rol.* 806. *l.* 45.

The Keeper of *Newgate.* 2 *Jon.* 62.

The Marſhal of the Marſhalſea in *B. R.* 9 *Co.* 98.

If he who has the Cuſtody of a Gaol in Fee, ſubſtitutes another for Life, or at Will, the Action ſhall be againſt him: for he has the actual Poſſeſſion of the Office. 9 *Co.* 98. *a.*

So,

So, if an Eſcape be out of the Cuſtody of Mayor or Bailiffs of a City, Town, &c. which has a Gaol; the Action ſhall be againſt them, and not againſt the Sheriff. 1 *Rol.* 99. *l.* 15.

So it ſhall be againſt a Bailiff of a Franchiſe, if the Eſcape be by him. 1 *Rol.* 99. *l.* 45.

And againſt the Serjeant, who made the Arreſt, if the Eſcape be after an Arreſt by him upon Proceſs from the Compter before Commitment to the Compter. *R.* 1 *Rol.* 806. *l.* 30.

So it ſhall be againſt both the Sheriffs of *London*, if the Eſcape be after an Arreſt upon a Plaint in the Compter, of one of them. *Dub. Sho.* 162. *Carth.* 145.

Or, againſt the ſurviving Sheriff of *London*, where one dies. *R. Cro. El.* 625.

So againſt all the Coroners, where the Arreſt was only by one. *Dub. Comb.* 435, 6. *Mod. Ca.* 37.

So it lies againſt the old Sheriff, if he omits to deliver any Priſoner by Indenture to the new. *R.* 2 *Leo.* 54. *Vide County*, (B. 3.)

But an Action for an Eſcape ſhall not be againſt the Superior, if the Inferior be ſufficient. 2 *Inſt.* 382.

*Vide Poſt*, (B. 3.)

(B. 3.) When againſt the Superior. *Vide Ante*, (B. 2.)

But in all Caſes where the Inferior is inſufficient, Debt lies againſt the Superior for the Eſcape. *Semb.* 2 *Jon.* 60. 1 *Vent.* 314. 2 *Lev.* 158. 9 *Co.* 98. *a.*

If he be inſufficient at the Time of the Action brought, tho' he was ſufficient at the Time of the Commitment, or Eſcape: for that is the Time moſt regarded. 2 *Jon.* 61. 2 *Lev.* 160.

And therefore, a Verdict is not ſufficient, if it does not find the Inſufficiency when the Action was brought, tho' it finds him inſufficient when he was Keeper, or at the Time of the Commitment, or Eſcape. *R.* 2 *Jon.* 61. 1 *Vent.* 314. 2 *Lev.* 160.

So it lies againſt the Superior, tho' the Inferior was admitted by the Court. *Adm.* 2 *Jon.* 61.

Tho' the Superior had no Notice of the Inſufficiency. *Adm.* 2 *Jon.* 61.

The Superior againſt whom the Action ought to be brought, is he, who by his Eſtate in his Office, or by his Authority without Eſtate, has the Power of putting in the inferior Officer. 2 *Jon.* 61.

As, the Duke of *N.* being Marſhal of *B. R.* in Fee, makes a Deputy; He himſelf is the Superior, and the Deputy the Inferior Officer. 2 *Inſt.* 382. 9 *Co.* 98. *b.*

The Sheriffs of *London* are the Inferior, the Mayor and Commonalty, who have the Office of Sheriff in Fee, are the Superior. 2 *Inſt.* 382.

If a Man, who has the Cuſtody of a Gaol in Fee, grants it for 3 Lives; He is the Superior, and the Grantee the Inferior. 2 *Inſt.* 382. *Semb.* 2 *Jon.* 61. 2 *Lev.* 159. *Adm.* 9 *Co.* 98. 1 *Vent.* 314.

So the Dean and Chapter of *Weſtminſter* are the Superior, the Bailiff of a Franchiſe, put in by them, the Inferior. *Adm.* 2 *Lev.* 159.

The Lord of a Franchiſe, who has a Gaol, is the Superior, and ſhall anſwer for his Gaoler. *Sav.* 11, 15.

But there cannot be two Superiors within the Statute. 2 *Inſt.* 382.

So Debt does not lie againſt the Superior, upon a general Declaration for an Eſcape; but he ought to be ſpecially charged for the Inſufficiency of the Inferior. *R.* 2 *Lev.* 160.

So, if a Man has the Cuſtody of a Gaol in Fee in Reverſion, after a Grant thereof for Life, rendring Rent, which was not made by him, the Reverſioner is

is not Superior. *Adm.* 2 *Jon.* 61. for the Superior is not ſuch in Reſpect of the Rent, or the Reverſion; but in Regard that the Inferior Officer derives his Eſtate from him.

## (C) What ſhall be an Eſcape.

AN Action lies for an Eſcape, if he permits his Priſoner to go at large; tho' he afterwards returns. *D.* 3 *Co.* 44. *a.* 1 *Rol.* 806. *l.* 13.

Tho' he does not go out of the ſame County. 1 *Rol.* 806. *l.* 15.

Or, out of the Town where the Gaol is. 1 *Rol.* 806. *l.* 24. *Hob.* 202.

Tho' he has a Keeper with him. *D.* 3 *Co.* 44. *a.* 1 *Rol.* 806. *l.* 17, 20. *R. Pl. Com.* 37. *Hob.* 202.

Or, goes with the King's Licence. 1 *Rol.* 808. *l.* 19.

Or, by Command of the Lord Treaſurer or Chancellor, to collect the King's Debt, being in Priſon for the King, as well as for the Party: for this does not excuſe the Eſcape, as to the Party. 1 *Rol.* 808. *l.* 15. *R. Dy.* 162. *b.* 297. *a.*

So, by the *St.* 8 & 9 *W.* 3. 27. If a Keeper permit a Priſoner on *meſne* Proceſs or Execution to go out of the Rules of the Priſon, unleſs by Virtue of a *Habeas Corpus*, or Rule of Court on Motion or Petition in open Court.

So, if by a *Habeas Corpus* in *Trinity* Term returnable *tres Mich.* a Priſoner goes into the Country with a Keeper, for the greateſt Part of the Vacation. *R.* 1 *Rol.* 808. *l.* 25, 35. *Hob.* 202. *Cro. Car.* 14.

Or, upon any *Habeas Corpus* be permitted to go at large in the Country. *Semb. Cro. Car.* 14. 3 *Co.* 44. *a.* *Mo.* 257, 299. *Per Hale*, 1 *Mod.* 116. *Hard.* 476.

Or, if upon a *Habeas Corpus ad teſtificand'*, he goes before and ſtays a long Time after the Aſſiſes. *Semb.* 1 *Mod.* 116.

Or, if upon a Day-Rule, *&c.* he goes to *Kenſington*, the Playhouſe, *&c. Cont. per Pemberton*, 2 *Sho.* 298. *Acc. per Raymond and Withens*, 2 *Sho.* 299.

If he goes into the Country by Order of the Court, *ad colligend. bona pro Solutione Debiti. R. Bend. pl.* 267.

If brought before a Baron, or other Judge, by his Command, after Term. *Dy.* 296. *b. in Marg.*

So, by the *St.* 8 & 9 *W.* 3. 27. If a Keeper after a Day's Notice in Writing refuſes to ſhew a Priſoner in Execution, to him at whoſe Suit he is ſo, or his Attorny.

By the *St.* 5 *Geo.* 24. If he permits a Bankrupt to eſcape, he ſhall forfeit 500 *l*; if he refuſes to ſhew him to a Creditor on Requeſt, 100 *l*; if convict again for like Offence, 200 *l.* *

So, if a Woman, Keeper of a Gaol, marries her Priſoner, it will be an Eſcape; for a Man cannot be in the Cuſtody of his Wife. *Pl. Com.* 37. *a.*

Or, if a Keeper in Fee dies, and his Office deſcends to the Priſoner. *Pl. Com.* 37. *a.*

The Action lies for an Eſcape; tho' the Priſoner was arreſted upon a *Latitat*. 1 *Rol.* 537. *l.* 50.

Or, committed by Commiſſioners of Bankrupts for not anſwering to Interrogatories. *R. Mo.* 834. 1 *Rol.* 47.

Or, in Cuſtody of the Sheriff upon an Attainder for Felony, when Proceſs at the Suit of the Party was delivered, upon which the Sheriff returned *Cepi Corpus*, and then the Priſoner is pardoned, and departs. *R.* 1 *Leo.* 276.

* [This Act is expired, but 5 *Geo.* 2. 30. is the ſame, except the double Penalty for 2d Offence.]

If

If committed upon a *Capias pro Fine*, where a *Capias ad Satisfaciendum* lies in the ſame Suit; for then he ſhall be in Execution for the Party, without Prayer. *R.* 1 *Rol.* 810. *l.* 20. 5 *Co.* 88. 13 *H.* 7. 2. *Bridg.* 7.

Or, upon a *Capias Utlagatum*. *R.* 1 *Rol.* 810. *l.* 35. *Cro. El.* 706. 5 *Co.* 88. *R. Cro. El.* 652. *R.* 5 *Mod.* 200.

Tho' the Outlawry was upon the ſame Proceſs. *R. F, g.* 265.

Or, upon a *Capias pro Fine* after Prayer, tho' no *Capias ad Satisfaciendum* lies. 1 *Rol.* 810. *l.* 30. 5 *Co.* 88.

Or, upon a *Capias Utlagatum*, *&c.* where a *Capias ad Satisfaciendum* lies; tho' taken after the Year after Judgment, and no Prayer be entred. *R.* 1 *Sal.* 319. *R.* 5 *Co.* 89. *b.*

So Eſcape lies, tho' taken upon an Eſcape-Warrant; by the *St.* 1 *An.* 6.

So an Action lies for an Eſcape, where the Priſoner was arreſted by Proceſs out of an Inferior Court.

Tho' it be pleaded that the Cauſe of Action aroſe out of the Juriſdiction, and that the Officer had Notice of it before the Return of the Writ: for the Officer cannot examine that Matter. *R.* 7 *An. inter Higgiſon* and *Sheaf.* (*Comyns's Rep.* 153, *&c.* by the Name of *Higgiſon* v *Sheriff.*) *Vide Courts*, (P. 15.)

Tho' the Judgment was erroneous, or for one who ſued without Colour. *R.* 3 *Mod.* 324. *Carth.* 148. *Adm.* 5 *Mod.* 413. *R.* 8 *Co.* 142. 2 *Bul.* 63. *R. Cro. El.* 164, 576. *Yel.* 42. *cont.*

So, an Action lies for an Eſcape, tho' he was convicted for Felony, before Judgment and Execution againſt him, and continued in Priſon for the Felony; for until he be executed for the Felony, he is chargeable to the Party. *R. Sav.* 63. 1 *Leo.* 276. 2 *Lev.* 84.

## (D) What not.

BUT it will not be an Eſcape, if the Party never was in his Cuſtody: as, if the old Sheriff does not deliver him over upon ſuch Execution. *R.* 3 *Co.* 72. *Adm.* 2 *Cro.* 588. *Poph.* 85. 2 *Leo.* 54.

If he be arreſted, but not actually committed to Gaol, the Gaoler ſhall not be charged for an Eſcape. *R.* 1 *Rol.* 806. *l.* 30.

So, if a *Committitur* be entred upon the Roll, but the Party is not taken. 1 *Sid.* 220.

So, if a Man bailed renders himſelf in Diſcharge of his Bail, and a *Reddidit ſe* is entred in the Judge's Book, and a *Committitur* entred with the proper Officer; yet if a *Committitur* be not entred with the Marſhal of *B. R.* or a Rule ſerved upon him, he ſhall not be charged for an Eſcape, tho' the Bail be diſcharged. *R.* 1 *Sal.* 272, 3.

So, if the Entry be, that *Virtute* of an *Habeas Corpus* to a Judge of *B. R. debito modo commiſſus fuit Mar'*; for that cannot be by Virtue of the *Habeas Corpus*. *R.* 2 *Sho.* 17, 8.

If he be at the Houſe of the Gaoler, but not within the Priſon. *R. Cro. Car.* 210.

So it will not be an Eſcape, where the Priſoner was not in Cuſtody at the Suit of the Plaintiff: as, if he was taken by a *Capias Utlagatum*, or a *Capias pro Fine*; where a *Capias* does not lie in ſuch Suit. 1 *Rol.* 810. *l.* 30.

Or, when he was not charged at the Prayer of the Plaintiff. 1 *Rol.* 810. *l.* 30. *R.* 1 *Leo.* 263. *Vide Ante*, (C.)

Or, was arreſted and ſuffered to go at large before the Writ of Execution delivered to the Sheriff. 1 *Rol.* 809. *l.* 30.

Or, upon a *Capias*, where no *Capias* was awarded by the Court. 1 *Rol.* 809. *l.* 35.

Or, upon a *Capias ad reſpondendum*, which was teſte'd in *Trinity* Term, and returnable in *Hilary* Term: for, not being returnable in the next Term, it is out of Court. *R.* 1 *Sal.* 273.

So it will not be an Eſcape, if he goes out of Priſon, by Reaſon of a ſudden Fire in the Gaol. 1 *Rol.* 808. *l.* 7.

Or, the Gaol be broke by the King's Enemies. *Bro. Eſcape* 10. 1 *Rol.* 808. *l.* 5.

Or, the Defendant be reſcued upon *Meſne* Proceſs, before he was in Gaol. *Mar.* 1. 1 *Rol.* 807. *l.* 35. *R.* 2 *Cro.* 419. 2 *Lev.* 144. 1 *Rol.* 389, 440.

Tho' the *Reſcous* be not returned. *R.* 2 *Lev.* 144.—Or if it be. *R.* 1 *Rol.* 440.

So, if the Defendant be retaken upon freſh Suit, before the Action commenced for the Eſcape. *R.* 1 *Rol.* 808. *l.* 50. *R.* 3 *Co.* 52. *R.* 13 *H.* 7. 2. *Godb.* 434. *Gol.* 180. *F. N. B.* 130. *B.*

Tho' the freſh Suit was not begun till a Day and a Night after the Eſcape. *R.* 1 *Rol.* 809. *l.* 10. 2 *Rol.* 681. *l.* 50. 3 *Co.* 52. *Mo.* 660. *Poph.* 41.

Tho' he did not retake him till he fled into another County. *Bro. Eſcape* 4. *R.* 3 *Co.* 52.

Tho' he was out of Sight. *R. Poph.* 41. 3 *Co.* 52. 14 *H.* 7. 1. *a.*

Tho' he did not retake him till ſeven Years after, if it was upon freſh Purſuit. 13 *Ed.* 4. 9. *a.* *Semb. Godb.* 177.

But freſh Suit is no Plea, where the Eſcape was voluntary in the Sheriff. *R.* 2 *Rol.* 283. *Vide Poſt*, (E.)

Or, after an Action brought, tho' before Plea. *Semb.* 2 *Rol.* 283. *R. cont. Lat.* 200.

So the Sheriff ſhall not be charged for an Eſcape, if the Priſoner goes out of Priſon with the Aſſent of his Creditor: for the *St. W.* 2. 11. ſays, *ſine aſſenſu Domini*. 2 *Inſt.* 382.

Tho' the Aſſent be only by *Parol*, it ſhall be a Bar. 2 *Inſt.* 382. *Dy.* 275. *a.*

But an Aſſent by *Parol* after an Eſcape does not diſcharge the Sheriff. *Dy.* 275. *a. in Marg.*

So it will not be an Eſcape, if the Sheriff, upon a *Habeas Corpus*, brings his Priſoner to *Weſtminſter*, tho' he goes out of the direct Way. *R.* 3 *Co.* 44. *Mo.* 299.

If he has a Writ to attend upon the Court, Commiſſioners, *&c.* for a Day. 1 *Ch. R.* 67.—Tho' he does not go to them. *Per Pemb.* 2 *Sho.* 298. —*Cont.* if he goes to another Place, *per Raymond* and *Withens*, 2 *Sho.* 299. *Vide Ante*, (C.)

So, if he goes with a Keeper to Counſel, *&c.* when he is in Execution for the King's Debt, tho' not in the Caſe of a Common Perſon, becauſe the Gaoler may retake him. *R. Sav.* 29.

So, if diſcharged upon an *Audita Querela*, tho' the Writ be afterwards vacated. *R. Mo.* 354.

So, if a Priſoner, brought by *Habeas Corpus*, goes out of the Cuſtody of the Sheriff, and returns the next Morning, and appears at the Return of the Writ. *R. Mo.* 257.

So, if a Priſoner goes out of the Rules of the Priſon, with the Conſent of the Plaintiff, without a Keeper or Rule of Court, upon an Intent to agree with the Plaintiff, and no Agreement is made; yet the Priſoner ſhall be diſcharged upon an *Audita Querela*. *R. Sti.* 117. *Semb. cont.* if the Plaintiff aſſents upon Condition, that it ſhall not prejudice his Execution. *Dy.* 275. *a.*

(E) When

## (E) When he ſhall be retaken, &c. after an Eſcape.

IF the Priſoner eſcapes by Negligence of the Sheriff, the Sheriff may retake him, and he ſhall not have an *Audita Querela*. *R.* 3 *Co.* 32. *b.* *R.* 1 *Sid.* 330. *Mo.* 660. *Dub. Sho.* 70. *Adm. Sho.* 177.

Or he may have an Action on the Caſe againſt the Priſoner for his Eſcape, whereby he becomes ſubject to the Action of the Party. *D.* 3 *Co.* 52. *b.* *Mo.* 660. *R. Mo.* 404, 597. *R. Cro. El.* 53, 237. 1 *Leo.* 237. *Lut.* 64.

And this, before an Action or Recovery againſt the Sheriff, as well as after. *Mo.* 660. *R. Godb.* 125. *Cro. El.* 53.

Tho' the Party afterwards acknowledges Satisfaction upon Record: for that goes only in Mitigation of Damages. *R.* 1 *Leo.* 237. *Semb. cont.* if he does not ſhew ſpecially, how ſatisfied. *Cro. El.* 237.

So, if a Priſoner eſcapes, and afterwards returns to the Priſon, the Plaintiff may admit him in Execution tho' he has a Remedy againſt the Sheriff. *Cont. Hob.* 202. *R. acc.* 1 *Vent.* 269. 2 *Lev.* 109, 132.

Or may retake him by a new *Capias ad Satisfaciendum*, if the firſt be not returned and filed. *R.* 3 *Co.* 52. *b.*

So he may retake him in all Caſes upon a negligent Eſcape; for the Sheriff may be inſufficient. *R. cont. Hob.* 202. *R. acc.* 1 *Sid.* 330. 1 *Vent.* 4. 269.

So, tho' the Eſcape was voluntary by the Gaoler, and without his Conſent. *R.* 1 *Sid.* 330. 1 *Vent.* 4. 1 *Lev.* 211. 2 *Mod.* 136. *R.* 2 *Jon.* 21. *Adm. Sho.* 177. *Semb. cont. Hob.* 202.

And now, by the *St.* 8 & 9 *W.* 3. 27. *it is enacted*, that if a Priſoner in Execution in the Marſhalſea or Fleet eſcape by any Means, the Plaintiff may retake him by *Capias ad Satisfaciendum*, or ſue out any other Execution againſt him, as if never in Cuſtody.

So, if a Priſoner be diſmiſſed upon a wrongful *Audita Querela*, he may be retaken, and ſhall be in Execution. *R. Mo.* 354.

So, after an Eſcape, the Plaintiff may have Debt or a *Scire facias* againſt the Defendant upon the former Judgment. *R.* 1 *Vent.* 269. *Cart.* 212. 2 *Jon.* 21. *R. Lut.* 1266. *Sho.* 174, 249.—Tho' it was with his Conſent ſubſequent. 1 *Sal.* 271.—Tho' he paid the Money to the Gaoler. *R.* 2 *Jon.* 97.

And by the *St.* 8 & 9 *W.* 3. 27. any other kind of Execution.

So, if a Man taken in Execution be reſcued, he may be retaken, or a *Scire facias* lies againſt him. *R. Cro. Car.* 240.

But, if the Sheriff ſuffers a voluntary Eſcape, he ſhall not have an Action upon the Caſe againſt the Priſoner. *R. Mo.* 597.

Or, if he retakes him, the Priſoner ſhall have an *Audita Querela*. 3 *Co.* 52. *b.* *R.* 1 *Sid.* 330.

So, if the Sheriff permits a voluntary Eſcape with Conſent of the Plaintiff, he never can be retaken by the Sheriff, or the Plaintiff. *R. Sho.* 174. *D.* 2 *Leo.* 119.

If the Conſent of the Plaintiff be precedent to the Eſcape; otherwiſe, if ſubſequent. *R.* 1 *Sal.* 271.

Yet if *A.* permits a voluntary Eſcape, and quits his Office to *B.* to whom the Priſoner returns; *B.* ought to detain him: otherwiſe it will be an Eſcape in him. 1 *Vent.* 269. 2 *Lev.* 109. *Semb. Mod. Ca.* 183. *Semb. cont. Hob.* 202.

Or, if the Office deſcends to *B.* *R.* 2 *Lev.* 109.



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And an Action for the Eſcape lies againſt *A.* or *B.* if he alſo permitted an Eſcape, at the Election of the Plaintiff. *R.* 2 *Lev.* 132.

So, by the *St.* 1 *An.* 6. If any committed to the Queen's Bench or Fleet, in Execution, on *Meſne* Proceſs, or Contempt in not obeying a Decree, eſcape, on Oath of it, a Judge ſhall grant a Warrant to all Sheriffs, Mayors, *&c.* reciting the Cauſe of Commitment, to retake him, who ſhall be committed to the County Gaol where retaken, and not delivered on any Account, till the Debt ſatisfied, Judgment reverſed, or Contempt diſcharged, unleſs removed for Treaſon or Felony, and then he ſhall remain charged with all Cauſes for which he was retaken.

He cannot be brought before a Judge by a Day-Rule, as another Priſoner may, to ſhew Cauſe of Action againſt another. *R. Mod. Ca.* 63.

So he may be taken upon a Sunday. *Mod. Ca.* 95. *Vide Temps,* (B. 3.)

But if the Party be not taken by lawful Authority upon an Eſcape-Warrant, if this appears upon the Return of the Warrant, he ſhall not be committed to the County-Gaol, but to the former Priſon: as, if brought, not by a Conſtable or other Officer, but by Perſons not known. *Mod. Ca.* 154.

So, if he be diſcharged by Agreement, after Commitment upon an Eſcape-Warrant, he ſhall not be afterwards retaken. *Mod. Ca.* 254.

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# ESCHEAT.

## (A) An Eſcheat.

### (A. 1.) For Want of Heirs.

AN *Eſcheat* is, when Land falls to the Lord of whom it is holden. *Co. L.* 13. *a.* 92. *b.*

Lands eſcheat *propter Defectum Sanguinis, vel propter Delictum.* *Co. L.* 13. *a.*

As, if *A.* ſeiſed in Fee, dies without Heir, the Land eſcheats to the Lord. *F. N. B.* 143. *T.*

Or, ſeiſed in Tail, Remainder to himſelf in Fee. *F. N. B.* 144. *A.*

So, if a Baſtard dies without Iſſue. *F. N. B.* 144. *E.*

If the Heir be attainted for Treaſon, or Felony. *Co. L.* 13. *a.*

So, if Land deſcends on the Part of the Father, if there be no Heir on the Part of the Father, the Land eſcheats. *Lit. S.* 4.

Or, deſcends on the Part of the Mother, if an Heir on the Part of the Mother fails, the Land eſcheats. *Lit. S.* 4.

If *A.* be diſſeiſed, and then dies without Heir, his Land eſcheats, and the Lord ſhall have a Writ of Eſcheat againſt the Diſſeiſor. *F. N. B.* 144. *C.*—*Semb. cont.* that the Lord never ſhall have a Writ of Eſcheat, except where his Tenant dies ſeiſed. 32 *H.* 6. 27. *a.* *Vide Poſt,* (B. 2.)

If *A.* deviſes in Fee to *B.* and if he dies without Heir, to *C;* the Deviſe ſhall be void againſt the Lord by Eſcheat. *Vau.* 270.

But, if a Diſſeiſor makes a Feoffment, or dies ſeiſed, whereby the Land deſcends, and afterwards the Diſſeiſee dies without Heir, the Land does not eſcheat; for the Feoffee, *&c.* is in by Title. *Co. L.* 268. *b.* *Hob.* 242.

So,

MUSEUM BRITANNICUM

So, if an Annuity, Rent-charge, Advowſon, *&c.* be granted in Fee, and the Grantee dies without Heir; theſe do not eſcheat to the Lord, for they are not held of him, but to the Grantor. 1 *Rol.* 816. *l.* 27, 30.

So, if a Corporation be diſſolved, their Land does not eſcheat, but goes to the Donor. *Co. L.* 13. *b.*

## (A. 2.) For the Offence of the Tenant.

So, if a Man ſeiſed in Fee be attainted for Treaſon or Felony, the Land eſcheats to the King, or the Lord of whom it was holden. *Vide Forfeiture*, (B. 1, &c.)

When the Forfeiture, or Eſcheat belongs to the King, *Vide Forfeiture*, (B. 5.)—*Prærogative*, (D. 59, 60.)

Eſcheat for Treaſon or Felony happens in three Caſes: *quia ſuſpenſus per Collum, quia abjuravit Regnum, vel quia utlagatus eſt.* *Co. L.* 13. *a.*

And, if a Man has Judgment to be hanged, his Land eſcheats tho' he dies before Execution, and the Writ ſhall ſay, *quia ſuſpenſus.* *F. N. B.* 144. *H.*

But, if the Felony be pardoned before Attainder, the Land does not eſcheat to the Lord. *Ow.* 87.

So, if *Ceſtuy que truſt* dies without Heir, the Lord ſhall not have the Truſt by Eſcheat; for the Feoffee continues Tenant to the Lord, and ſhall hold the Lands diſcharged of the Truſt. *Hard.* 496.

# (B) Writ of Eſcheat.

## (B. 1.) When it lies.

A Writ of Eſcheat lies by the Lord, when his Tenant in Fee-ſimple dies without Heir. *F. N. B.* 143. *T.*

And if the Lord dies before the Writ ſued, his Heir ſhall have it. *F. N. B.* 144. *D.*

So, the Succeſſor of an Abbot, Biſhop, *&c.* *F. N. B.* 144. *L.*

So, Tenant for Life of a Seigniory, or by Curteſy, or in Dower. *F. N. B.* 144. *M.*

So, if Tenant in Tail with the Fee expectant to himſelf, dies without Heir, the Lord ſhall have a Writ of Eſcheat: for the Tenant in Tail held his Reverſion of him. *F. N. B.* 144. *A.*

Or, if Tenant in Fee be diſſeiſed, and afterwards dies without Heir. *F. N. B.* 144. *C.*

A Writ of Eſcheat lies; tho' the Lord accepts the Rent of him in Poſſeſſion. *F. N. B.* 144. *O.*

And the Proceſs ſhall be, Summons, *Grand Cape*, and *Petit Cape*, as in a *Præcipe quod Reddat.* *F. N. B.* 144. *O.*

For the Proceeding in Eſcheat, *Vide Pleader*, (3 C.)

## (B. 2.) When not.

But if Tenant in Tail dies without Iſſue, he in Reverſion or Remainder ſhall not have a Writ of Eſcheat, but a *Formedon.* *F. N. B.* 144. *A.*

So, if he in Remainder after an Eſtate for Life dies without Heir, and then the Tenant for Life dies, the Lord ſhall not have a Writ of Eſcheat,

but Intruſion; for the Tenant for Life was Tenant to the Lord. *F. N. B.* 144. *B.*

So, if the Tenant be diſſeiſed, and dies without Heir, when his Entry is congeable, the Lord ſhall not have a Writ of Eſcheat; for he never ſhall have a Writ of Eſcheat except where his Tenant dies ſeiſed; but he may enter. 32 *H.* 6. 27. *a.*

If the Entry of the Tenant was not congeable, he cannot enter, nor have a Writ of Eſcheat. 32 *H.* 6. 27. *a.*

So, if the Lord accepts any Corporal Service, as Homage or Fealty, of him in Poſſeſſion, he ſhall not afterwards have a Writ of Eſcheat. *F. N. B.* 144. *O.* *Co. L.* 268. *a.* 4 *H.* 6. 21. *a.*

Tho' it be accepted of a Diſſeiſor. *Co. L.* 268. *a.*

So, if he avows in a Court of Record for Rent due from the Tenant, or Diſſeiſor. *Co. L.* 268. *a.*

Or, accepts Rent of the Heir or Feoffee of the Diſſeiſor, where the Deſcent or Feoffment was after the Eſcheat. *Co. L.* 268. *a.*

But, if the Lord accepts Rent of the Tenant, this does not bar him of a Writ of Eſcheat. *Co. L.* 268. *a.* 4 *H.* 6. 21. *a.*

So, tho' he accepts Rent of the Diſſeiſor, his Tenant. *Co. L.* 268. *a.*

## (C) The Office of Eſcheator.

BY the Common Law there were two Eſcheators, the one *ultra Trentam*, and the other *citra Trentam*, who had Sub-Eſcheators, and to whom it belonged, to inſpect the Eſcheats, Wards, and other Caſualties which fell to the Crown. *Co. L.* 13. *b.* 92. *b.*

In the Time of *Ed.* 2. there was an Eſcheator conſtituted in each County for Life; and ſo it continued until the Time of *Ed.* 3. *Co. L.* 13. *b.*

By the *St.* 14 *Ed.* 3. 8. an Eſcheator was appointed by the Treaſurer for each County; and ought to continue only for a Year.

By the *St.* 1 *H.* 8. 8. He ſhould not be named, who was an Eſcheator within three Years before.

The Mayor, *&c.* of a City, *&c.* may be an Eſcheator, by Grant, or Preſcription. *R. Ley* 5.

By *Pat.* 4 *Ed.* 4. The Mayor of *London pro tempore* is conſtituted Eſcheator within *Southwark*. *Hard.* 11.

An Office, taken by an Eſcheator out of his Precinct, will be void. *Semb. Hard.* 12.

# ESCUAGE.

*Vide Homage*, (E.)

# ESGLISE.

## (A) A Church, how erected.

THE Nature of an Advowſon of a Church, Appendant, or in Groſs, and the Grant of it, or of the next Avoidance, *Vide* in *Advowſon*, (A.—B.—C. 1, 2.)

The Appropriation, or Union of Churches, *Vide* in *Advowſon*, (D. 1, &c. —E.—F. 1, 2.)

By the Common Law any one might build a Church in his Soil, without Licence of the King, or any other. 3 *Inſt.* 201.

And this Privilege was claimed by the Barons of the Realm. *Seld. de Dec.* 360. *Dub. Cod. Ju. Eccl.* 212.

But it ſhall not be taken as a Church, till it be conſecrated by the Biſhop. 3 *Inſt.* 203. *Seld. de Dec.* 85.

And this was decreed by a Council under *Wilfrid* Archbiſhop of *Canterbury*, *A°.* 816. *Seld. de Dec.* 261. *c.* 9. *ſ.* 4.

And afterwards, by the *Canon*, *A°.* 1102, No Church can be erected without Endowment. *D. of Pluralities* 80. *Cod. Ju. Eccl.* 212.

So, by the Canon Law, none can build a Church without Licence of the Biſhop. *Cod. Ju. Eccl.* 212.

## (B) A Cathedral.

A Church is either *Major*, as a Cathedral; or *Minor*, as a Pariſh-Church, *&c. Lind.* 9.

The Cathedral is the See of the Biſhop, *Sedes Epiſcopi*. 2 *And.* 168.

And cannot be conveyed to another, without the Biſhop. *Q.* 2 *And.* 168.

The King by his Patent may create a Church *et ambitum Eccleſiæ*, a Cathedral. *Jon.* 166.

## (C) A Pariſh-Church.

ABOUT the Year 700 the *Saxons*, in large Diſtricts, founded Churches for themſelves and their Tenants; which were the Original of Pariſh-Churches. *Seld. de Dec.* 259. *c.* 9. *ſ.* 4.

Within thoſe Diſtricts other Churches were afterwards erected, which in Proceſs of Time have obtained Tithes, Burial, and Baptiſm, and thereby become Pariſh-Churches. *Seld. de Dec.* 262. *c.* 9. *ſ.* 4. *D. of Plu.* 92.

And therefore, every Church, having Burial, Baptiſm, and Tithes, is now eſteemed a Pariſh-Church. *Seld. de Dec.* 265. *c.* 9. *ſ.* 4.

Or Burial, & *Sacramentalia*. 2 *Inſt.* 363.

## A Vicarage.

As to a Vicarage, *Vide Eccleſiaſtical Perſons*, (C. 10, &c.)

## (D) A Chapel.

A Church built within the Precinct of a Pariſh-Church, to which Burial, and Sacraments belong, is a Chapel of Eaſe. 2 *Rol.* 340. *l.* 50.

And it belongs to the Pariſh-Church, and the Parſon of it. 2 *Rol.* 341. *l.* 2.

And therefore, a Pariſh-Church cannot be a Chapel. 2 *Rol.* 340. *l.* 55.

The Parſon of a Pariſh-Church ought to find a Chaplain for a Chapel of Eaſe within his Precinct.

But he may officiate there himſelf.

## (E) The Church-yard.

THE Cemetery *circa Eccleſiam majorem* 40 *Paſſus, circa minorem* 30 *continere debet. Lind.* 253, *verb. Clauſ. Cemeterii.* 267, *verb. Cæmeteriis.*

As to the Church-yard, the Privileges, and Burial there, *Vide Cemetery.*

## (F) Church-Wardens.

### (F. 1.) How choſen.

BY the *Canon* 1°. *Jac.* 89. All Church-wardens ſhall be choſen by joint Conſent of the Miniſter and Pariſhioners, if it may be: but if they cannot agree, the Miniſter ſhall chuſe one, and the Pariſhioners another.

And, by Common Right, the Election ought to be by the whole Pariſh. *Hard.* 379.

By *Canon* 90. The Election ſhall be yearly in *Eaſter* Week.

If the Biſhop or Eccleſiaſtical Court make an Order, that a ſelect Veſtry ſhall chuſe, this does not exclude the other Pariſhioners, if they will be preſent at the Veſtry. *R. Lane* 21.

But, by Cuſtom, they may be choſen by the Pariſhioners, without the Parſon. *R.* 2 *Rol.* 234. *l.* 15. 2 *Cro.* 532.

If they are incorporated to be choſen by the Pariſhioners, they ought to be choſen by all the Pariſhioners aſſembled. *R. Lane* 21.

So, by Cuſtom, the Election ſhall be by a Select Veſtry, and not by the whole Pariſh. *R. Hard.* 379.

So, for Miſbehaviour, the Pariſhioners may diſcharge them, and chuſe others. *Lamb. Ch. Sect.* 3.

By the *Canon* 1° *Jac.* 89. They ſhall continue in Office but one Year, except choſen again in like Manner.

But, by *Can.* 118. They ſhall be reputed to continue till new Church-wardens ſworn.

The Church-warden being choſen cannot be refuſed by the Archdeacon, or Spiritual Court, on Pretence of Poverty, or other Inability. *R.* 1 *Sal.* 166. 5 *Mod.* 326.

And if he be refuſed, a *Mandamus* lies for ſwearing him. *Vide Mandamus.*

Church-Wardens may be required by the Spiritual Court to take an Oath.

But no Oath ſhall be required of them, except in general to execute their Office. *Hard.* 364. *Vide Prohibition.*

Nor can a Fee be demanded for Swearing them, or taking their Preſentments. *R.* 1 *Sal.* 330.

An Attorny of *B. R. &c.* may have a Writ of Privilege to excuſe him, and, if it be not obeyed by the Spiritual Court, a Prohibition. 2 *Rol.* 368.

So, if any who has Privilege be choſen, a Writ goes to the Eccleſiaſtical Court that he be not ſworn. *R. Pal.* 392.

Church-wardens are Lay-Perſons tho' Eccleſiaſtical Officers. *Per Hale, Hard.* 379. (*Vide* 2 *Rol.* 71. 1 *Sal.* 166. 5 *Mod.* 326.)

## (F. 2.) Their Duty.

By the *Canon* 1° *Jac.* 89. They ſhall in a Month after the End of the Year give Account of all Monies received and diſburſed, and deliver up to Pariſhioners what is in their Hands. *Vide Poſt,* (F. 3.)

By *Canon* 90. They ſhall ſee that all Pariſhioners reſort to Divine Service, and continue the whole Time; and preſent thoſe remiſs, *&c.*

By the *St.* 2 & 3 *Ph. & M.* 8. and 5 *El.* 13. They are to receive and beſtow on the Highways in the Pariſh the Forfeitures collected by the Bailiff or Head Conſtable, for Defaults of repairing Highways.

By the *St.* 1 *El.* 2. They are to levy 12 *d.* forfeited for not reſorting to the Pariſh-Church, *&c.* to the Uſe of the Poor, by Diſtreſs upon the Goods or Lands of the Party.

By the *St.* 43 *El.* 2. They (and the Overſeers) are to ſet the Poor to work, and to raiſe by Taxation of every Inhabitant, Parſon, Vicar, Occupier of Lands, Houſes, Tithes, Coal Mines, or ſaleable Underwood, a Stock of Materials, and alſo Money for the Relief of the impotent Poor, and to put out poor Children Apprentices; and may levy ſuch Rates by Warrant from 2 Juſtices upon the Party's Goods, and in 4 Days after the End of the Year ſhall account, and deliver over the Money, *&c.* in their Hands to their Succeſſors.

By the *St.* 1 (*or* 2) *Jac.* 9. They are to levy the Penalties upon Alehouſe-keepers, *&c.* for ſuffering Tipling in their Houſes, *&c.* by Diſtreſs on the Offender's Goods.

By the *St.* 3 *Jac.* 4. They are yearly to preſent the Monthly Abſence from Church of Popiſh Recuſants, and the Names and Age of their Children, and the Names of their Servants at the General or Quarter Seſſions, under the Penalty of 20 *s.* for every Default.

They may take off the Hat of any, who wears it in Church at the Time of Divine Service, without a Proſecution in the Spiritual Court. *R.* 1 *Sand.* 13. 1 *Lev.* 196. 1 *Sid.* 301.

Church-wardens for Neglect of their Duty may be ſued in the Spiritual Court.

As, if they take the Bells out of the Church. 1 *Sid.* 281, 2.

Or, an Action lies againſt them by their Succeſſors. 1 *Sid.* 282.

So an Indictment lies, if they take Money, *&c. corruptè, Colore Officii,* and do not account for it. *R.* 1 *Sid.* 307.

So they may be removed for Miſbehaviour, and others choſen before the Year expires. *Lamb. Off. Ch. Sect.* 3.

But, to a Suit in the Spiritual Court to compel them to account, after an Account allowed by the Miniſter and Pariſhioners, a Prohibition lies. *R.* 2 *Rol.* 71.

And no Suit ſhall be againſt them by their Succeſſors for a Thing done *Ratione Officii. R. Godb.* 279.

## (F. 3.) Their Power.

*Vide Ante*, (F. 2.)

Church-wardens may maintain Treſpaſs, or other Action poſſeſſory againſt any who wrongfully take the Bells, Books, or other Goods of the Church; for, tho' the Property is in the Pariſhioners, the Cuſtody and Poſſeſſion belong to them. *R.* 11 *H.* 4. 12. *a.* *R.* 1 *Rol.* 57.

Tho' another Pariſhioner, or the Vicar himſelf, takes them. *R.* 11 *H.* 4. 12. *a.*

Tho' the Goods were bought by the Pariſhioners themſelves; for when they are given into the Cuſtody of the Church-wardens, an Action lies by them. 11 *H.* 4. 12. *a.*

And the Declaration may be *ad Damnum ipſorum*, or, of the Pariſhioners. *R. Cro. El.* 179. 8 *Ed.* 4. 6. *b.* *Dal.* 105. *Vide infra.*

So they may have an Appeal of Robbery for ſuch Goods ſtolen. 12 *H.* 7. 27. *b.*

So they ought to have the Action; for a Suit for them by the Parſon in the Spiritual Court ſhall be prohibited. *R.* 1 *Rol.* 57.

The Declaration may be, that they were poſſeſſed *de Bonis Eccleſiæ*, or, *Parochianorum.* *Dub.* 1 *Vent.* 89.

And the ſucceeding Church-wardens ſhall maintain Treſpaſs, &c. for Goods taken in the Time of their Predeceſſors. 12 *H.* 7. 28. *a.* *R. Cro. El.* 145, 179. *Dub. Dal.* 105. *R.* 1 *Leo.* 177.

But the Treſpaſs ought to be alledged in the Declaration only *ad Damnum Parochianorum.* *R. Cro. El.* 179. *Vide ſupra.*

And if one releaſes, it does not bar his Companion. *R.* 2 *Cro.* 234. *Yel.* 173.

So, if Goods are given to a Pariſh or Church, the Church-wardens may take them; for they are a Corporation for ſuch Purpoſe. 12 *H.* 7. 29. *a.*

And the Succeſſors may have Account for them againſt their Predeceſſors. 8 *Ed.* 4. 6. *b.* 1 *Vent.* 89.

So, if Goods are put into the Church to be there uſed; for that is a Gift. *Lamb. Ch. Sect.* 2.

So Church-wardens may have an Action againſt any one, who defaces a Monument, &c. *Godb.* 279.

But Church-wardens cannot purchaſe, or take Lands given to the Uſe of the Pariſh: for they are not a Corporation for Lands. *R.* 12 *H.* 7. 29. *a.* 1 *Rol.* 393. *l.* 10.

Neither can they make a Leaſe of Lands given to Feoffees for the Uſe of the Pariſhioners. *R.* 12 *H.* 7. 29. *a.* 13 *H.* 7. 10. *a.*

Nor maintain Treſpaſs or other Action for Entry, or taking the Profits of ſuch Land. 12 *H.* 7. 29. *a.*

Or for breaking the Windows, Walls, &c. of the Church, or cutting down Trees in the Church-Yard.

Yet, by the Cuſtom of *London*, Church-wardens are a Corporation to purchaſe and demiſe Lands. 2 *Cro.* 532. *Jon.* 439.

So Church-wardens cannot ſue for a Legacy, or a Thing never in their Poſſeſſion, by Action at Common Law.

So one only cannot diſpoſe of the Goods, without his Companion. 2 *Cro.* 234.

Nor both together; for the Law does not give them Power to do any Thing to the Diſadvantage of the Church. 13 *H.* 7. 10. *a.* *Yel.* 173. *R.* 1 *Rol.* 393. *l.* 20. 1 *Rol.* 426.

Yet a Diſpoſition by them, with the Conſent of the Pariſh, ſhall be good. 1 *Rol.* 393. *l.* 26.

Or the ſending a Bell, with Conſent, to be caſt, ſhall be a Diſcharge upon Account, tho' no Bar to an Action. *R.* 1 *Vent.* 89.

## (G. 1.) To whom the Freehold of the Church belongs.

THE Soil and Freehold of the Church and Church-Yard belong to the Parſon. 2 *Cro.* 367. *Vide Eccleſiaſtical Perſons,* (C. 9, 14.)

And therefore, the Parſon alone may give a Licence for Burying in the Church. *R.* 2 *Cro.* 367. *Noy* 104. *Vide Cemetery,* (B.)

So he may make a Leaſe of the Church and Church-Yard. 2 *Rol.* 337. *l.* 10.

And ſhall have the Trees growing in the Church-yard for the Repair of the Church.

## (G. 2.) To whom, the Repairs, and Ornaments.

By the Cuſtom of *England,* the Repair of the Chancel belongs to the Parſon. 2 *Inſt.* 489. 1 *Sal.* 165.

Or, if there be a perpetual Vicar, to the Vicar. 2 *Rol.* 337. *l.* 15.

But, by Cuſtom, the Repair of the Chancel as well as of the Church, in *London,* belongs to the Pariſhioners. *Per Holt,* 1 *Sal.* 165. *Lind.* 53.

The Repair of a private Chapel belongs to the Owner; tho' it be annexed to the Church. 2 *Inſt.* 489.

So, by the Cuſtom of *England,* the Repairs *in Navе Eccleſiæ* belong to the Pariſhioners of the ſame Pariſh. 2 *Inſt.* 489, 653. *Lind. de Off. Archid.* 53.

So, the Repair of a publick Chapel annexed to a Church. 2 *Inſt.* 489.

So the Pariſhioners are to find Ornaments to the Church, as well as other Repairs: as Bells, Seats, *&c.* 2 *Inſt.* 489.

The Inhabitants of a Chapelry, who antiently repaired the Church, ſhall not be exempted by Diſuſage. *R.* 1 *Sal.* 164.

If Men uſually repair a Chapel of Eaſe, and have Divine Service there, but have Burial in the Mother-Church; they are not by that excuſed from the Repair of the Mother-Church. *R.* 2 *Rol.* 289. *l.* 50. *Hob.* 66. *Semb.* 3 *Mod.* 264.

If a Man reſides in one Pariſh, and occupies Land in another Pariſh, he ſhall be charged to the Repair of the Church where the Land lies: for he is a Pariſhioner there, and may reſort to the Pariſh Meetings. R. 5 *Co.* 67. *Cro. El.* 659. *R.* 2 *Rol.* 289. *l.* 20.

So, to Bells; for they are as neceſſary as the Repair of the Steeple. *R.* 1 *Sal.* 164.

If the major Part of the Pariſh at a Veſtry agrees to make Repairs, the others are bound.

Tho' it be to find Ornaments, as new Bells, *&c.* *R.* 2 *Rol.* 291. *l.* 20. 1 *Sal.* 164.

But a Rate made only by the Church-wardens is not ſufficient. *R.* 1 *Sal.* 165. *Dub.* 1 *Vent.* 367. if the Pariſh refuſe.

But for Ornaments a Pariſhioner is liable only in Reſpect of his Perſonal Eſtate. *R.* 2 *Rol.* 291. *l.* 5.

So,

So, for Ornaments *de novo* which were not antiently there, an Inhabitant of another Pariſh is not chargeable, tho' he occupies Land there. *R.* 2 *Rol.* 291. *l.* 10. *Per* 2 *J. Bul.* 20. *Cont.* by the Canon Law. *Degg.* *Part* 1. *Ch.* 12. *R.* 3 *Mod.* 211.

Nor, for any Ornaments. *R.* 2 *Rol.* 291. *l.* 10.

Yet for Bells he ſhall be charged; for they are as neceſſary as the Steeple itſelf. *R.* 1 *Sal.* 164.

So a Man ſhall not be charged to the Repair of the Church, in Reſpect of Land, which he has in another Pariſh. *R.* 5 *Co.* 67. *R.* 2 *Rol.* 289. *l.* 30.

Nor, in Reſpect of Rent of Land in Leaſe to another in the ſame Pariſh: for there is another Inhabitant chargeable for it. *R.* 5 *Co.* 67. *b.* *R.* 2 *Rol.* 289. *l.* 25. 4 *Mod.* 148.

So he ſhall not be charged for a Stand in a Market in the ſame Pariſh, when he inhabits in another Pariſh. *R.* 2 *Rol.* 289. *l.* 35.

So the Inhabitants of an Hamlet, who have a Chapel of Eaſe, may preſcribe to be diſcharged from the Repair of the Mother-Church. *R.* 2 *Rol.* 290. *l.* 22. *Hob.* 67. *Acc.* 2 *Lev.* 102.

As, if they repair the Chapel and the Wall of the Church-Yard at the Mother-Church. *R.* 2 *Rol.* 290. *l.* 30.

Or, contribute 3*s.* 4*d.* yearly to the Repair of the Mother-Church. *R.* 2 *Rol.* 290. *l.* 45.

So, if they have repaired the Chapel, and have uſed to marry and bury there, and never repaired the Mother-Church. *Semb. cont.* 2 *Rol.* 290. *l.* 10. *R. acc.* 1 *Sal.* 165. for then it ſhall be deemed coeval with the Church.

So, if they repair the Chapel, and have Divine Service, Sacraments, a Chapel-Warden, and Seats there, and Nothing in the Mother-Church, but Burial in the Church-Yard. *Semb.* 2 *Lev.* 186.

## (G. 3.) The Seats.

The Diſpoſal of all Seats in *Nave Eccleſiæ* belongs to the Ordinary. *Adm.* 8 *H.* 7. 12. *Per Co. Godb.* 200. 2 *Bul.* 150.

And generally, the Ordinary may place, or remove Perſons there at his Pleaſure.

A Preſcription by the Pariſhioners to diſpoſe without the Interpoſition of the Ordinary, will be void. 1 *Sal.* 167. *R.* 2 *Lev.* 241.

So, if a Chapel to a Monaſtery, after the Diſſolution has always been uſed there as a Pariſh-Church, the Ordinary may have the Diſpoſition of the Seats there, tho' he had it not originally.

So, if an Iſle of a Church be always repaired at the Common Charge of the Pariſh, the Ordinary may diſpoſe of the Seats there. 2 *Cro.* 366.

But a Man may preſcribe for the ſole Enjoyment of a Seat in an Iſle, or Choir of a Church. *R.* 3 *Inſt.* 202. 2 *Rol.* 288. *l.* 10.—*R.* if he has uſed to repair it. 2 *Cro.* 366. *R. Mo.* 878.

So, for a Seat in a Chancel. *Noy* 133.

So, for a Seat in *Nave Eccleſiæ*. *Hob.* 69. *R. cont. Mo.* 878. *Acc.* 1 *Sid.* 89. *Godb.* 200.

So, for the firſt, ſecond, or other Place in the Seat. *Noy* 133. 78. 1 *Sid.* 89.

So, for a Seat in an Iſle of a Church of another Pariſh. *R.* 1 *Sid.* 361.

So a Cuſtom, that the Church-wardens repair and make new Seats, when there is Occaſion, and, with the Conſent of 12 Pariſhioners, place or diſplace the Inhabitants there according to their Quality, at their Diſcretion, ſhall be good againſt the Ordinary. *R.* 2 *Rol.* 24.

And

And if a Man be diſturbed by the Parſon, Ordinary, or Church-wardens by Suit in the Spiritual Court, he may have a Prohibition. 2 *Cro.* 366. *R. Godb.* 200.

So, if he be diſturbed by them or any other, he may have an Action upon the Caſe. 2 *Cro.* 605. *R.* 1 *Sid.* 88, 203. 1 *Lev.* 71. *R.* 2 *Jon.* 3. *R.* 2 *Lev.* 193. *R.* 3 *Lev.* 73. *Vide Action upon the Caſe for a Diſturbance*, (A. 3.)

Yet to intitle himſelf to a Prohibition, he ought to ſuggeſt ſome Ground for ſuch a Preſcription: as, Repair. *R. Hob.* 69. *R.* 2 *Cro.* 366. *Noy* 104. *R.* 1 *Sid.* 89.

Or, for a Seat in the Chancel, that he has the Rectory impropriate; for the Rector ought to repair the Chancel. *Noy* 133.

So, in an Action on the Caſe, tho' he need not alledge an Uſage to repair in the Declaration, yet he ought to give it in Evidence at the Trial. *R.* 1 *Sid.* 88, 203. 1 *Lev.* 71. *Buxton and Bateman. R.* that he need not alledge it in the Declaration. 2 *Jon.* 3. *R.* 3 *Lev.* 73.

Yet a Preſcription for a Seat as to his Manor, where he has no Houſe in the Pariſh, is not good, tho' an Uſage to repair be ſuggeſted. *Semb.* 2 *Mod.* 283. (*Vide Hob.* 69.)

As to Burial in the Church, or Church-yard, *Vide Cemetery*, (B.)—So as to Tombs, Monuments, *&c. ibidem*, (C.)

## (H) Preſentation to a Church.

### (H. 1.) What are Preſentative.

BEFORE the Time of K. *John*, the King and other Founders of Abbies and Priories uſed to preſent the Abbots and Priors. 2 *Rol.* 342. *l.* 20.

But by K. *John*, Abbots and Priors, as well as Biſhops, were made elective. 2 *Rol.* 342. *l.* 23. *Co. L.* 134. *a.*

So there may be a Preſentation to a Deanery. 2 *Rol.* 342. *l.* 32.

To an Hoſpital. 2 *Rol.* 342. *l.* 33.

To a Pariſh-Church.

To a Chapel. 2 *Rol.* 342. *l.* 34.

To an Archdeaconry. 1 *And.* 241.

To a Prebend; for if they are in a Layman, he ought to preſent to them.

But there is no need of a Preſentation to a Donative. *Vide Donative.*

So, if a Biſhop be ſeiſed of an Advowſon, and the Church becomes void; the Biſhop ſhall not preſent to another, but ſhall make Collation himſelf. 11 *H.* 4. 9.

### (H. 2.) By whom it ſhall be.

A Preſentation, regularly, ought to be made by the very Patron.

(H. 2.) Who ſhall be Patron.

As, if a Man be ſeiſed of an Advowſon in Fee, in Tail, or for Life. *Vide Advowſon*, (A.)

Or has a Grant of the next Avoidance. *Vide Advowſon*, (C. 2.)

If a Man, ſeiſed of an Advowſon in Fee, be alſo Parſon of the ſame Church and dies; his Heir ſhall preſent, tho' the Church became void at the Time of the Deſcent: for, where two Titles concur in the ſame Inſtant, the Elder ſhall be preferred. *R.* 3 *Lev.* 47.

But, if the Patron dies after the Avoidance happens, his Executor or Adminiſtrator ſhall preſent, and not the Heir.

So, if a *Feme covert* dies after the Avoidance of a Church, which ſhe has, her Huſband ſhall preſent. *Co. L.* 120. *a.*

If a Villein purchaſes an Advowſon, his Lord, after Avoidance, may preſent, without a prior Entry. *Co. L.* 120. *a.*

By Common Right, the Parſon, and not the Patron of the Parſonage, ſhall be Patron of the Vicarage. 2 *Rol.* 336. *l.* 7, 30. 1 *Rol.* 231. *l.* 3.

So, if a Church be appropriated, the Parſon appropriate ſhall be Patron of the Vicarage; for he is Founder, the Vicarage being derived out of the Parſonage. 2 *Rol.* 336. *l.* 12, 25. *Cont. per Ld. Chan.* 1 *Ver.* 42. But there was a Leſſee of a Parſon impropriate.

Yet a Layman may be a Patron of a Vicarage. 2 *Rol.* 336. *l.* 20.

And the ſame Perſon may be Patron of the Parſonage, and alſo of the Vicarage. 2 *Rol.* 336. *l.* 22.

So, by Preſcription, a Vicarage may be appendant to a Manor; for perhaps by Grant of the Parſon or Compoſition, it was annexed to the Manor before Time of Memory. *R.* 2 *Rol.* 336. *l.* 30. 1 *Rol.* 231. *l.* 6.

Or Pariſhioners may preſcribe to chuſe a Vicar. 2 *Rol.* 304.

If a Vicarage becomes void in the Time of the Vacation of the Parſonage, the Patron of the Parſonage ſhall preſent. 2 *Rol.* 346. *l.* 5.

So, by Common Right, the Biſhop is Patron of all his Prebends. 3 *Co.* 75. *b.*

And of a Provendry, Deanery, *&c.* within his Biſhoprick. 2 *Rol.* 346. *l.* 3.

And the Arch-biſhop, of the Deanery of his Arch-biſhoprick. 2 *Rol.* 345. *F.*

(H. 3.) Preſentation in Turn.

Parceners ſeiſed of an Advowſon may join in Preſentation. *Co. L.* 166. *b.* 186. *b.*

And if they cannot agree to make Preſentation jointly, they ought to preſent ſeverally in Turn. 2 *Rol.* 346. *l.* 20.

The eldeſt Parcener ſhall have the firſt Turn. *Co. L.* 166. *b.* 186. *b.* 2 *Rol.* 346. *l.* 20.

And this Privilege goes to her Heir. *Co. L.* 166. *b.* 186. *b.*

Or her Aſſignee. *Co. L.* 166. *b.* 186. *b.*

And if ſhe takes Huſband, and dies after Iſſue born, whereby her Huſband is Tenant by the Curteſy, it goes to the Huſband. *Co. L.* 166. *b.* 186. *b.* *Cro. El.* 19.

So, if two Parceners aſſign their Parts of an Advowſon ſeverally, they may preſent by Turn; for they are not mere Tenants in Common. *R. Cro. El.* 19.

But Parceners may make a Compoſition to preſent out of Turn.

And, if upon Partition, the whole Advowſon be allotted to the Youngeſt, ſhe alone ſhall preſent.

Tho' the Partition was in *Chancery*, and One within Age; for it is good till it be defeated. 2 *Rol.* 346. *l.* 45.

And if the Partition be avoided, they may afterwards preſent in Turn, or by Compoſition. 2 *Rol.* 347. *l.* 5.

Yet a Compoſition to preſent out of Turn, does not bind without Deed. 2 *Rol.* 346. *H.*

If there be Parceners, One of full Age, and the other within Age and in in Ward of the King; the King ſhall have the Preſentation, or firſt Turn. 2 *Rol.* 343. *l.* 41. *Sho.* 208.

If the eldeſt Parcener joins with one of the other Parceners in a Preſentation, the Biſhop may refuſe All, when the other Parcener, who did not join with the eldeſt, alſo preſents, and need not take the Preſentee of the eldeſt; becauſe ſhe did not preſent ſeverally. *Co. L.* 186. *b.*

So Joint-tenants and Tenants in Common may join in Preſentation. *Co. L.* 186. *b.*

And, if they preſent ſeverally, the Ordinary may refuſe or admit their Clerk. *Co. L.* 186. *b.*

So, if one only preſents, without the others. *Co. L.* 186. *b.*

So Joint-Grantees of the next Avoidance ought to join in Preſentation.

And, if one alone preſents, the Ordinary may refuſe. 2 *Rol.* 348. *l.* 45.

Yet where there are three Grantees, and two of them preſent the other who is a Clerk, the Ordinary cannot refuſe him; for he cannot join in a Preſentation of himſelf. 2 *Rol.* 348. *l.* 40.

(H. 4) When the Turn is ſerved.

If upon a Preſentation the Church be full, the Turn ſhall be ſerved, tho' the Preſention be afterwards avoided.

As, if an Incumbent be deprived, *quia mere Laicus*: for the Church was full till the declaratory Sentence. 2 *Rol.* 347. *l.* 35. 5 *Co.* 102. *Vide Poſt*, (M.)

Or, deprived for Hereſy, or other Crime. 2 *Rol.* 347. *l.* 30.

But if a Preſentation be wholly void, it ſhall not ſerve for a Turn: as, if *A.* be preſented, inſtituted and inducted, and afterwards does not read the 39 Articles, for which the *St.* 13 *El.* 12. makes the Preſentation, *&c.* void. 2 *Rol.* 347. *l.* 50. 5 *Co.* 102. *b.*

So, if after Deprivation, *A.* be preſented, *&c.* and then the Deprivation is reverſed, and the firſt Incumbent reſtored; the Preſentation of *A.* ſhall not ſerve the Turn. *R.* 2 *Rol.* 347. *l.* 40. 5 *Co.* 102.

If the Guardian of the Youngeſt Parcener within Age, marries the Eldeſt, and afterwards preſents in the Name of both; this ſhall not ſerve the Turn of the Eldeſt. 2 *Rol.* 347. *l.* 20.

If a Diſpenſation be granted, upon a Ceſſion, *tenere in Commendam*, and confirmed by the King; this does not ſerve the Turn of the King. *R. Sal.* 541.

If *A.* and *B.* ought to preſent by Turn, and *A.* uſurps upon the Turn of *B.* he ſhall not loſe his own Turn. *Semb. F. g.* 250.

(H. 5.) Preſentation by the King. As Patron.

If the King be ſeiſed of an Advowſon, in which the Church exceeds the Value of 20 Marks, he himſelf ſhall preſent. 38 *Ed.* 3. 3. *b.*

And if the Chancellor preſents, upon a Suppoſition, that it was under ſuch Value, and before Induction the King preſents, his Preſentee ſhall be admitted; or, being refuſed, ſhall have a *Quare Impedit*. 38 *Ed.* 3. 3. *b.*

But, after Induction, ſuch Preſentee of the Chancellor ſhall not be removed. 2 *Rol.* 189. *l.* 5. *Hob.* 214.

Except, where the Preſentation by the Chancellor takes Notice, that it was under that Value, when it is not ſo: for then the King is deceived. 2 *Rol.* 189. *l.* 10. *Hob.* 214.

But to a Church of the Crown, under the Value of 20 Marks, the Chancellor ſhall preſent. 38 *Ed.* 3. 3. *b.*—Or of 20 *l.* *Hob.* 214.

So, if a Church belongs to an Infant in Ward of the King. *Mo.* 874. *Vide Poſt*, (H. 6.)

(H. 6.) By his Prerogative.

If the King's Tenant of a Manor dies, his Heir within Age, who is in Ward to the King, and during the Wardſhip a Church of the Ward becomes void, the King ſhall preſent. *Vide Ante*, (H. 5.)

Tho'

Tho' the Church becomes void before Seiſure of the Ward.

So, if it was void in the Life of the Tenant, and continued void at his Death, the King ſhall preſent.

Tho' the Tenant preſented in his Life-time, and there was Inſtitution upon it, but he died before Induction.

Tho' the Tenant died after a Lapſe to the Biſhop, but before his Collation.

Tho' the King does not preſent till the Heir ſues Livery.

Or, the Church does not become void till Tender of Livery by the Heir, if the Livery be not ſued.

So, if the King grants over the Ward.

So, if an Archbiſhop or Biſhop dies, and during the Time that the Temporalties are in the Hands of the King the Church becomes void, the King ſhall preſent. 2 *Rol.* 344. *l.* 21.

Or, if the Church becomes void after the Death of the Biſhop, before Seiſure. 2 *Rol.* 344. *l.* 26.

Or, in the Life of the Biſhop, *&c.* who does not collate in his Life-time. 2 *Rol.* 343. *l.* 30.

Tho' the King does not preſent, till the Succeſſor ſues Livery. 2 *Rol.* 343. *l.* 32.

Tho' by Compoſition the Preſentation belongs to another, and not to the Biſhop; for the Compoſition does not bind the King. 2 *Rol.* 343. *l.* 35.

Or, if the Biſhop collates *A.* in his Life-time, but dies before *A.* is inducted. *R.* 11 *H.* 4. 9. *a.*

But if a Biſhop preſents and his Clerk is inducted in the Morning, tho' he dies in the Afternoon, the King ſhall not preſent.

So, if the Succeſſor be elected before the Avoidance, tho' he be not conſecrated, the King ſhall not have the Preſentation. 2 *Rol.* 343. *l.* 15.

So, if the King be Patron of a Church, united by the *St.* 22 *Car.* 2. 11. to a Church of which a Subject is Patron, and which is of greater Value (and therefore by the Words of the Statute ſhall have the firſt Turn) the King ſhall not have the firſt Turn by his Prerogative. *Sho.* 208.

So, if an Incumbent be made a Biſhop, by which a Church becomes void tho' a Subject be Patron, the King ſhall preſent. *Bro. Preſentment* 14. *Cont. Dy.* 228. *b.* *Dub. Ow.* 144. *Cro. El.* 527. *R. acc. Mo.* 399. *Per* 2 *J. Hutton cont.* 2 *Cro.* 691. 2 *Rol.* 343. *l.* 25. *R. M.* 6 *W. & M. Ca. Parl.* 185. *Vau.* 19, 20. 3 *Lev.* 377. *Sho.* 457. 4 *Mod.* 200.

So, if an Archdeacon be created Biſhop, the King ſhall preſent to the Archdeaconry; and not the Patron. *R.* 3 *Leo.* 151. 4 *Leo.* 61.

So, if he be created a Biſhop in *Ireland.* *Cro. El.* 790. 1 *Ver.* 419. *Dub.* 4 *Inſt.* 356, 7. *Vide Poſt,* (N. 1.)

So, if one Incumbent after another be created a Biſhop, the King ſhall preſent *toties quoties.* *R. M.* 6 *W. & M. B. R. between The King and Doctor Lancaſter.* 3 *Lev.* 378. *Sho.* 441, 462, 501. 4 *Mod.* 200.

So, if the Incumbent be created a Biſhop, and has a *Commendam retinere,* which expires in the Life of the Biſhop; the King ſhall preſent. *R. Ca. Parl.* 170, 185. 3 *Lev.* 378. *Sho.* 449, 463. 4 *Mod.* 200.

So, if the Incumbent be created a Biſhop, the King ſhall preſent, tho' the Patronage be eſtabliſhed by Act of Parliament. *R. Ca. Parl.* 173, 185. 3 *Lev.* 382. *Sho.* 413. *Sal.* 540. 4 *Mod.* 200.

But the King ſhall not preſent where the Incumbent of a Donative is made a Biſhop. *Ca. Parl.* 184.

Nor, where a Biſhop elect has a *Commendam retinere* for his Life. *Ca. Parl.* 184. 2 *Rol.* 344. *l.* 5.

Nor, where an Incumbent of an Hoſpital is made a Biſhop. 2 *Rol.* 343. *l.* 15.

Or a Provender of a Provendry. 2 *Rol.* 343. *l.* 10.

So, if the King does not preſent upon the next Avoidance, he ſhall not preſent afterwards. *R. Cro. El.* 790.

So, if a Patron be outlawed, when an Avoidance happens the King ſhall preſent. 1 *Leo.* 139, 201. *Mo.* 270.

Yet, upon Reverſal of the Outlawry, the Patron ſhall be reſtored; and upon Recovery in a *Quare Impedit*, he ſhall have a Writ to the Biſhop. *R. Mo.* 270. *Cro. El.* 44.

So, if *A.* be outlawed, and a Church appendant to a Manor, which the King has in his Poſſeſſion by the Outlawry, afterwards becomes void, and the King preſents, *&c.* The Incumbent ſhall not be removed, tho' the Outlawry be reverſed. *R. Mo.* 270.

## (H. 7.) How a Preſentation by a Common Perſon ſhall be made.

If a Common Perſon preſents, he ought to ſhew how the Church became void, by Death, or Ceſſion, Reſignation, or Deprivation.

A Preſentation may be by *Parol*, as well as by Writing. *Co. L.* 120. *a.* 1 *Brownl.* 162.

And, if it be by Writing ſealed, it is not a Deed; but in Nature of a Letter of Recommendation of the Clerk to the Biſhop. *Co. L.* 120. *a.*

If a Patron preſents one, who is inſtituted, but dies before Induction, yet the Patron cannot preſent *de novo*. 9 *Co.* 132. *a.*

But if a Patron writes and ſeals a Preſentation, and the Clerk without his Privity or Conſent obtains it, and is inſtituted and inducted upon it, it ſhall be void. *Yel.* 7.

## (H. 8. How a Preſentation by the King ſhall be made.

So, regularly, a Preſentation by the King ought to ſhew by what Title he preſents.

And if he miſtakes his Title, the Preſentation is void; for the King was deceived: as, if he preſents *ratione Lapſûs*, where he was very Patron. *R.* 6 *Co.* 29. *b.* *Adm. Cro. Car.* 99, 592. *Vau.* 14.

Otherwiſe, if he preſents generally, without ſaying, by what Title. 1 *Mod.* 254.

So the King ſhall preſent upon an Avoidance in the Time of his Predeceſſor, and not the Executor or Adminiſtrator of the deceaſed King.

Tho' the *St.* 25 *Ed.* 3. *de Clero.* 1. ſays, He or his Heirs ſhall not preſent to a Benefice of the Time of his Progenitors, *&c.* for this extends only to the Progenitors of *Ed.* 3, as appears by the Saving. 11 *H.* 4. 7. *R. Cro. Car.* 355. *Jon.* 338.

So the King may preſent by *Parol*. *Co. L.* 120. *a.* *Mo.* 874. 2 *Cro.* 248.—If the Biſhop be preſent. 1 *Brownl.* 162.

But the uſual Way is to make a Preſentation by Inſtrument under the Great Seal.

Or, if it be under the Privy Seal, it is ſufficient. *Per* 2 *J.* 2 *Cro.* 248.

So, if he preſented to a Church in Right of a Ward, under the Great Seal, or Seal of the Court of Wards, it is good; for it is not material which Seal. *R. Cro. Car.* 99. 1 *Brownl.* 162.

Yet by the *St.* 3 *H.* 7. (not printed,) All Grants, *&c.* of Lands, Advowſons, *&c.* Parcel of the Dutchy of *Lancaſter*, are void, if they be not under the Dutchy-Seal.—And therefore, a Preſentation, under another Seal, to a Church within the Dutchy, is void. *R. Cont. Mo.* 874. 2 *Rol.* 182. *l.* 15. 1 *Brownl.* 162. *D. cont.* 1 *Leo.* 227. *Vide Patent*, (C. 4.)

So a Preſentation under the Seal of the Court of Wards, where the King has not the Church in Right of a Ward, is void. *R. Cro. Car.* 100.

So a Preſentation under the Exchequer-Seal, is void. 2 *Cro.* 248.

If the King preſents a Clerk, who dies before Induction, he ſhall preſent *de novo*; for his Preſentation ought to have compleat Effect. *R.* 9 *Co.* 132. *a.*

## (H. 9.) Within what Time a Preſentation ſhall be made.

*Vide Poſt*, (H. 11, &c.—N. 1, 2.)

Every Common Perſon ought to preſent within ſix Months after the Avoidance, if the Church becomes void by the Death of the Incumbent; otherwiſe the Preſentation lapſes to the Biſhop. 3 *Leo.* 46. 2 *Rol.* 363. *l.* 25.

Tho' the Patron preſents, and his Clerk is refuſed for Inability. *R. Dy.* 327. *b.* *R.* 4 *Mod.* 140. *Ca. Parl.* 103. *Bend. pl.* 136. 3 *Leo.* 46. 2 *Rol.* 364. *l.* 20.

So, if a Church becomes void by Statute; as, by Acceptance of a Plurality; for the Patron ought to take Notice at his Peril. *R. Dy.* 237. *a.* 2 *Inſt.* 632. *R. Cro. Car.* 357. *Jon.* 338.

By Certificate of the Biſhop for Nonpayment of Tenths according to the *St.* 26 *H.* 8. 3. *R. Dal.* 59.

So, if a Church becomes void by Ceſſion. *Jon.* 337.

And the 6 Months ſhall be reckoned by the Calendar, *viz.* 182 Days. *Dy.* 327. *b. in Marg.* *Vide Ann*, (B.)

But if an Avoidance be by Reſignation, or Deprivation, the 6 Months do not commence till Notice of the Avoidance given by the Ordinary to the Patron. *Dy.* 327. *b.* *Dal.* 51, 59. *R. Bend. pl.* 234. *Dy.* 293. 3 *Leo.* 46. *Vide Poſt*, (N. 11.)

Tho' the Patron was Party to the Suit, in which he was deprived. *R.* 6 *Co.* 29.

Tho' Notice be given by other than the Ordinary; for the Ordinary himſelf ought to give expreſs Notice, that he was deprived for ſuch a Cauſe, and that thereby the Church became void, and it belongs to him to preſent. *R.* 6 *Co.* 29. *b.*

Tho' the Biſhop dies, the Lapſe does not ncur to his Succeſſor before Notice. 2 *Rol.* 365. *l.* 20.

Tho' the Temporalties are in the King's Hands: for the Guardian of the Spiritualties ought to give Notice. 2 *Rol.* 365. *l.* 26.

So, by the *St.* 13 *El.* 12. If the Preſentee does not read the 39 Articles, by which the Church is *ipſo facto* void without a declaratory Sentence, yet it is provided that no Lapſe commence till Notice. *R.* 6 *Co.* 29. *b.* *Dy.* 369. *b.*

## (H. 10.) When it may be revoked.

If the King makes a Preſentation, he may afterwards revoke it, and preſent another. *Adm.* 38 *Ed.* 3. 3. 2 *Rol.* 188. *l.* 40.

And this, at any Time before Induction, tho' the Clerk be inſtituted, and a Letter ſent to the Archdeacon to induct him. *Bro. Qu. Imp.* 1, 10, 65.

If

If the King revokes a former, and makes a ſecond Preſentation; the former is void without Notice to the Ordinary. *Dy.* 327. 2 *Rol.* 188. *l.* 52.

So a Lay-Patron, before Inſtitution, may vary his Preſentation, and preſent another; upon which the Biſhop may admit the one or the other. *Lat.* 191, 253.

Or may revoke the former Preſentation before Admiſſion. *Per Dod. Lat.* 192, 254. 2 *Rol.* 349. *l.* 7.

So a Patroneſs, tho' a Spiritual Perſon, as an Abbeſs, might vary her Preſentation: for ſhe is not more appriſed than a Lay-Patron, of the Sufficiency of her Clerk. *Kel.* 154. *a.*

But if the King makes a ſecond Preſentation, without Mention or Revocation of the former, it ſhall be void. *Semb. Cro. Car.* 100. 2 *Rol.* 188. *l.* 40. *Dy.* 339. *b.*

But *R. cont.* for the firſt Preſentee had not any Eſtate or Intereſt in the Church. 2 *Rol.* 190. *l.* 30. If the ſecond Preſentation, without Mention of the former, be after Inſtitution upon the former, it ſhall be void. *R. Dy.* 339. *b. in Marg. Per* 3 *Jac.* 2 *Cro.* 248.

So, if the ſecond Preſentation be obtained by Covin, or by Deceit to the King. *R. Dy.* 339. *b. Bend. pl.* 279.

Otherwiſe, if the 2d Preſentation be obtained without Covin, and before Admiſſion and Inſtitution upon the former. *R. Dy.* 339. *b. in Marg.*

So a Spiritual Patron cannot revoke or vary his Preſentation; for he ſhall be intended conuſant of the Sufficiency of his former Clerk. *R. Kel.* 154. *a. Acc. per* 2 *J. Whitl. cont. Lat.* 191, 253.

## (H. 11.) Preſentation by Lapſe.

If a Patron does not preſent within 6 Months after Avoidance, (where he ought to take Notice of it, or after Notice, when the Ordinary ought to give Notice,) the Church lapſes to the Biſhop, and he ſhall preſent by Lapſe. 2 *Inſt.* 273. And this ſeems to be by a Canon in the Council of *Lateran.* 2 *Rol.* 362. *O.* (H. 11.) To the Biſhop, and Archbiſhop. *Vide Ante,* (H. 9.)

If the Biſhop does not preſent within ſix Months after the Lapſe to him, then the Church lapſes to the Archbiſhop.

And a Lapſe incurs, tho' the Patron be an Infant. 3 *Leo.* 46.

Or, out of the Realm. *Wat.* 1.

So a Lapſe incurs if no Clerk was preſented, tho' the Patron brings a *Quare Impedit* againſt the Biſhop and others. *Per Hob.* 200.

Tho' the Patron recovers in a *Quare Impedit*, if the Biſhop be not a Party, and no Writ comes to the Biſhop within 6 Months. 2 *Rol.* 366. *l.* 5.

But the Biſhop, or the King cannot grant the Benefit of the Lapſe to another. 2 *Rol.* 187. *l.* 32. *Hob.* 154.

If a Biſhop dies after a Lapſe incurred, his Executor or Adminiſtrator ſhall not preſent, but the King; for it is a Truſt, and not an Intereſt. *Hob.* 154.

So, if the Biſhop does not preſent, nor the Archbiſhop within 6 Months after a Lapſe to him, the Church lapſes to the King. (H. 12.) To the King.

And, upon a Lapſe to the King, he is not confined to any Time; for the *St.* 25 *Ed.* 3. 1. does not extend to Preſentations to be thereafter made. *R. Cro. Car.* 355. *Jon.* 337.

So, the King's Succeſſor may preſent upon a Lapſe to his Predeceſſor. *R. Cro. Car.* 355. *Jon.* 337. 11 *H.* 4. 7.

So, if a Biſhop does not collate to a Dignity, Prebend, *&c.* a Lapſe incurs to the King.

So, if he does not collate, where the Avoidance is by Acceptance of another Benefice, and the former is in his own Dioceſe, a Lapſe incurs before Deprivation.

H. 13. When there ſhall be no Benefit of a Lapſe.

But if a *Quare Impedit* be brought againſt a Biſhop, upon Refuſal of a Clerk, tho' 6 Months paſs *pendente Lite*, there ſhall be no Lapſe to the Biſhop. *Co. L.* 344. *b.*

So, in every Caſe, where a *Quare Impedit* is brought within 6 Months, no Lapſe incurs to the Biſhop, if he be made a Party to the Writ. *Co. L.* 344. *b.* *R.* 6 *Co.* 52. *a.* 2 *Cro.* 93. *Hob.* 320.

Nor in ſuch Caſe ſhall there be a Lapſe to the Archbiſhop, or the King; for where there is not a Lapſe to the Biſhop, it ſhall never be to the Archbiſhop, or the King *Co. L.* 344. *b.* 345. *a.* *R.* 6 *Co.* 52. *a.* 2 *Cro.* 93. 2 *Rol.* 365. *l.* 21.

So, no Lapſe incurs, where the King is Patron, tho' he does not preſent within 6 Months, or afterwards. 2 *Inſt.* 273.

So, after a Lapſe, if the Patron preſents before the Biſhop or Archbiſhop collates, his Clerk ſhall be inſtituted. *R. Hut.* 24. *Hob.* 152, 4. 2 *Inſt.* 273.

So, after a Lapſe to the King, if the Patron preſents before the King takes Advantage, and his Clerk is admitted, inſtituted, and inducted, and dies Incumbent, the King ſhall not preſent by Lapſe: for Lapſe is only *unicâ & proximâ Vice.* *R. Ow.* 2. *Mo.* 224, 269. *Cro. El.* 44. *Adm. Ow.* 5. *Mo.* 259. *Cro. El.* 119. *R.* 7 *Co.* 28. *Adm.* 2 *Cro.* 216. *Lut.* 1086. 2 *Dy.* 277. *a.*

So, if a Clerk preſented by a Patron after a Lapſe to the King reſigns, without Covin. 2 *Cro.* 216.

But after a Lapſe to the King, tho' the Patron preſents before the King takes Advantage, and his Clerk is inſtituted, and inducted, the King may preſent *quamdiu* the Preſentee of the Patron continues Incumbent. *R.* 2 *Cro.* 216. *Dub. Hob.* 154.

Tho' ſuch Preſentee afterwards reſigns, by Covin. 2 *Cro.* 216. 1 *Brownl.* 161.

So, if he be deprived. *Adm. Ow.* 5. *Mo.* 259. *Cro. El.* 119.

So, if he does any Act by which the Church becomes void; as, for not paying his Tenths. *R. Ow.* 5. *Mo.* 259. *Cro. El.* 119.

So, if the Biſhop, after a Lapſe to him, collates, and the Patron preſents before Induction, the Biſhop may refuſe his Clerk. *Dy.* 277. *a.*

## (H. 14.) Preſentation by Uſurpation.

H. 14. What ſhall be.

If a Man preſents to a Church without Title, this Uſurpation makes as it were a *Diſſeiſin*, which puts the rightful Patron out of Poſſeſſion, and, by the Common Law, gains the Advowſon to the Uſurper for ever, if it be not recovered by *Right of Advowſon.* *Co. L.* 344. *b.* *R.* 6 *Co.* 49.

And, after Uſurpation, the rightful Patron cannot grant the Advowſon to another, till Recovery.

And, by the Common Law, an Uſurpation upon an Infant, *Feme Covert, &c.* puts them to their *Right of Advowſon.* *R.* 6 *Co.* 49.

So the King may make Uſurpation by his Preſentation; for the Induction creates the Wrong. *Per* 3 *J. Windh. cont.* 1 *Sid.* 163.

So Collation without Title puts him, who has Right to collate, out of Poſſeſſion. 6 *Co.* 30. *a.* *Co. L.* 344. *b.* 6 *Co.* 50. *a.*

So

So the King ſhall be put out of Poſſeſſion of the next Avoidance, by an Uſurpation upon him. 1 *And.* 81. *Vide Poſt*, (H. 15.)

But if a Preſentation be void, tho' the Clerk be inſtituted, and inducted upon it, it is not an Uſurpation, nor ſhall the rightful Patron be thereby out of Poſſeſſion, nor need he have a *Quare Impedit* to remove ſuch Incumbent; As, if the King preſents upon a miſtaken Title. *R.* 6 *Co.* 29. *b.* *Vau.* 14. *Vide Poſt*, (M.) (H. 15.) What not.

Or, if Inſtitution, and Induction be upon a Preſentation by the King, which was revoked. 6 *Co.* 29. *b.*

Or the Biſhop collates before ſix Months elapſe. *R.* 6 *Co.* 29. *b.* for the Church is not full without a Preſentation, or lawful Collation. *Co. L.* 344. *b.* *Hob.* 316.

So no Collation without Title puts him, who has a Right to preſent, out of Poſſeſſion. 6 *Co.* 30. *a.* 50. *a.* *Per* 2 *J. Dal.* 59. *ſee alſo Co. Litt.* 344. *b.*

So a Collation by Title does not put him, who has Right to preſent, out of Poſſeſſion. *R.* 1 *Leo.* 226. *Cro. El.* 240.

So a Recovery in a *Quare Impedit* againſt a Clerk, whom the King preſented by Uſurpation, avoids the Uſurpation. *R.* 1 *Mod.* 255.

So ſince the *St.* 1 *El.* An Uſurpation upon a Biſhop, or other Eccleſiaſtical Perſon, tho' it puts him out of Poſſeſſion, does not bind his Succeſſor, who ſhall have a *Quare Impedit*, or preſent, as if no Uſurpation had been made. *R. Jon.* 46.

So Uſurpation upon an Infant does not bar him, but he may recontinue by Preſentation or *Quare Impedit*. *Jon.* 46.

So, by Uſurpation upon the King, he ſhall not be put out of the Inheritance of an Advowſon. 6 *Co.* 49. *b.* *Co. L.* 344. *b.* *R.* 1 *Brownl.* 166. *R. Dal.* 75. *R.* 1 *And.* 81. *Per* 2 *J. Cro. El.* 519. *Vide Ante*, (H. 4.)

Yet he ſhall loſe the Preſentation *hâc Vice*, if he does not recover it by *Quare Impedit*. 6 *Co.* 49. *b.* 2 *Cro.* 54, 123.

And if he confirms the Eſtate of the Preſentee, it ſhall be good. 1 *Brownl.* 166.

So, by 20 Uſurpations upon the King, he ſhall not be put out of Poſſeſſion of the Advowſon, but ſhall maintain a *Quare Impedit* upon the next Avoidance. *R. and Judgment cont. reverſed.* 2 *Cro.* 53, 123. 2 *Rol.* 371. 1. 45. *R. Cro. El.* 240. 1 *Leo.* 226. *R. cont. Godb.* 7.

Tho' the King be ſeiſed in Right of the Dutchy of *Lancaſter*. *R. Cro. El.* 240 1 *Leo.* 226.

So, after an Uſurpation, a Patron may recover, by *Right of Advowſon* by the Common Law, tho' he loſes the preſent Preſentation for ever. *Co. L.* 344. *b.*

So, by the *St. W.* 2. 5. may thoſe intitled in Reverſion after the Death of a Tenant in Dower, by the Curteſy, for Life, or for Years, or in Tail, or an Heir, of full Age who has been in Ward, where the Uſurpation was during the particular Eſtate, or during the Wardſhip.

So, by the *ſame Statute* Women diſcovert, where the Uſurpation was during their Coverture.

Eccleſiaſtical Perſons, where it was during the Vacancy.

But till Recovery he continues out of Poſſeſſion, and a Grant of the Advowſon by him is void. *Jon.* 46.

So, till Recovery, or Preſentation by an Infant, or the Succeſſor of a Biſhop. *Jon.* 46.

So, by the *St.* 7 *An.* 18. No Uſurpation, *&c.* ſhall diſplace the Eſtate or Intereſt of any intitled to an Advowſon, or turn it to a Right; but ſuch Perſon ſo intitled may preſent or have a *Quare Impedit* on the next or any ſubſequent Avoidance, as if no Uſurpation had been.

## (I) Admiſſion and Inſtitution; How made, &c.

WHEN a Patron preſents his Clerk to the Ordinary, he, upon Examination, if he finds him qualified, ought to admit him; and thereupon he ſays, *admitto te habilem. Co. L.* 344. *a.*

And afterwards, *inſtituo te Rectorem talis Eccleſiæ, accipe Curam tuam & meam. Co. L.* 344. *a.*

But Admiſſion, and Inſtitution are taken the one for the other. *Co. L.* 344. *a.*

The Inſtitution by the Ordinary was introduced *circa Tempus R.* 1 & *John*; before which the Incumbent took his Church by Inveſtiture of the Patron. *Seld. de Dec.* 86, 375, 382.

The Ordinary ought to make Inſtitution in a convenient Time after the Preſentation tendered to him.

By the *Canon*, 1 *Jac.* 95. The Space of two Months, which by former Conſtitutions Biſhops had to inquire of the Sufficiencies and Qualities of Miniſters preſented, is reduced to 28 Days. And within the 28 Days the Biſhop ſhall not inſtitute any other to the Prejudice of the Party before preſented, *ſub pœna Nullitatis.*

Inſtitution may be made by the Biſhop out of his Dioceſe; and by any Seal. *R. Jon.* 331.

And tho' made after a *Caveat*, without hearing of the Party, it ſhall not be void. *R.* 1 *Rol.* 227.

If a Patron preſents after a Lapſe to the Archbiſhop, and before Collation by him, he may preſent to the Biſhop. 2 *Rol.* 348. *l.* 50.

After Inſtitution, the Biſhop ſends Letters to the Archdeacon to make Induction. *Vide Poſt*, (L.)

But the Ordinary may refuſe a Clerk preſented to him, if he be *minus idoneus*, as, if he be a Villein, a Baſtard, outlawed, excommunicated, or within Age. 2 *Inſt.* 632.

Or, *merè Laicus.* 2 *Inſt.* 632. 5 *Co.* 58. *a.*

So, if he be *criminoſus*; as a Heretick, or Schiſmatick, *&c.* 2 *Inſt.* 632. *R. Dal.* 51.

Or, a Manſlayer, Felon, *&c.* 5 *Co.* 58.

Or, guilty of any Offence, for which he ought to be deprived. *R.* 5 *Co.* 58. *a.*

So, if he be illiterate. 2 *Inſt.* 632. *Ca. Parl.* 91.

Tho' he was before admitted to Orders, and a Benefice. *Ca. Parl.* 90. *Sal.* 539.

So, if the Benefice be in *Wales*, and the Clerk does not underſtand *Welch*. *R. Cro. El.* 119. 1 *Leo.* 31.

So, if he be not in Orders, and gives no reaſonable Proof that he is. 1 *Leo.* 230.

If he be an Alien. 4 *Inſt.* 338.

The Examination of a Clerk belongs to the Ordinary as a Judge, and not as a Miniſter. 2 *Inſt.* 632.

After Refuſal, the Ordinary ought to give Notice of it to the Patron, if he be refuſed for any Cauſe which belongs to the Conuſance of the Eccleſiaſtical Law; as, for Hereſy, Schiſm, Illiterature, *&c.* 2 *Inſt.* 632. 4 *Mod.* 140. *Sal.* 539.

And the Notice ought to be Perſonal by Letters from the Biſhop to the Patron; for Notice fixed to the Door of the ſame Church is not ſufficient. *Dy.* 327. *b. Cro. El.* 119. *Vide infra. Vide Poſt*, (N. 11.)

Tho'

Tho' he had Perſonal Notice before of the Refuſal of a former Preſentee, and the Patron ſtill continues in the ſame County. *Dy.* 328. *a.*

So Notice ought to be given in a convenient Time. *R.* 4 *Mod.* 140. *Ca. Parl.* 103. *Sal.* 539. *R.* 1 *Leo.* 32. *Cro. El.* 119.

But there needs no Notice to the Patron, where he is refuſed for a Temporal Crime; as Manſlaughter, *&c.* 2 *Inſt.* 632. 3 *Leo.* 47. *Adm. Sal.* 539.

Or, for a Diſability incurred by Act of Parliament, if the Act does not oblige Notice to be given. 2 *Inſt.* 632.

So Notice upon the Door of the Church is ſufficient, where the Patron is out of the County. *Cro. El.* 119. 1 *Leo.* 32. *Vide ſupra.*

Yet the Cauſe of Refuſal is traverſable; and if it be a Spiritual Matter, and the Clerk is living, it ſhall be tried by the Metropolitan. 2 *Inſt.* 632. 5 *Co.* 58. *a.*

If the Cauſe of Refuſal be a Temporal Matter, or a Spiritual Matter when the Party is dead, it ſhall be tried by the Country. 5 *Co.* 58. *a.* 2 *Inſt.* 632.

And therefore, if a Patron brings a *Quare Impedit* againſt the Biſhop upon Refuſal of his Clerk, the Plea of the Biſhop ought to ſhew a certain and particular Cauſe of Refuſal; for it is not ſufficient to ſay, generally, *quod non fuit idoneus*, or, *quod fuit criminoſus, &c.* *R.* 5 *Co.* 58.

Or, that he was a Haunter of Taverns, *ob quod & alia Crimina, &c.* 5 *Co.* 58. *a.* *Mar. pl.* 11.

That he was a Schiſmatick, without ſhewing, how. *R.* 5 *Co.* 58. 3 *Leo.* 200.

But, *quod fuit minus ſufficiens in Literaturâ, & eâ Ratione inhabilis*, is ſufficient; for it is in the Negative, and does not conſiſt of a ſingle Inſtance, but general Ignorance. *R. Cont. in C. B. and aff. in B. R. but afterwards reverſed in Parliament.* 4 *Mod.* 135. *Ca. Parl.* 92. 3 *Lev.* 314. *Sal.* 539.

So it ſhall not be a Cauſe for Refuſal, that he does not produce his Letters of Orders; for perhaps they are loſt. 1 *Leo.* 230. *Cro. El.* 241, 2.

That he had not any Letters Teſtimonial. 1 *Leo.* 230.

## (K) Jure Patronatus.

### (K. 1.) How it ſhall be awarded.

SO, if two preſent to the Biſhop, he may have a *Jure Patronatûs* before he inſtitutes the Clerk of either of them; and upon that a Commiſſion goes under the Biſhop's Seal, to his Chancellor and others, who make a Mandate to an Officer to ſummon 12 or more, one Moiety Clerks, the other Laymen.

The Jury ought to inquire, 1. Whether the Church be void, and how; 2. Who preſented laſt; 3. Who is the rightful Patron; 4. Who ought now to preſent; 5. Whether the Clerk be *idoneus*.

### (K. 2.) When neceſſary.

A *Jure Patronatûs* may be awarded whenever a Church is litigious: as, if 2 Patrons preſent ſeveral Perſons to the ſame Church. *Hob.* 317.

Or the ſame Perſon; for the Admittance of the Clerk of one puts the other out of Poſſeſſion.

So,

So, if the Biſhop ſuſpects the Title of the Patron, he may award a *Jure Patronatûs* tho' the Church be not litigious. *Hob.* 318.

As, where Lapſe does not incur before Notice, to aſcertain the very Patron. *Hob.* 318.

So, if there be a Verdict in a *Jure Patronatûs* for the one Patron, and afterwards he preſents his Clerk; and before his Admittance, the other preſents; the Biſhop may award a new *Jure Patronatûs*.

So, if either Party requires a *Jure Patronatûs*, the Biſhop ought to award it; otherwiſe he will be a Diſturber.

## (K. 3.) When not.

But the Biſhop need not award a *Jure Patronatûs*, except at the Prayer and Coſts of one, or both Parties. *R.* 2 *Leo.* 168.

So, he may admit at his Peril the Clerk of either Patron, tho' the Church be litigious, without a *Jure Patronatûs*; but he will be a Diſturber thereby, if the Patron of the Clerk admitted does not appear to have Title. 2 *Leo.* 168. 1 *Rol.* 227.

If he admits the Clerk of one Patron without a *Jure Patronatûs* before the other preſents, he ſhall not be a Diſturber; tho' the firſt Patron afterwards does not appear to have Title.

So, if a *Jure Patronatûs* be granted, he may admit the Clerk of the one *pendente Lite*, upon Peril that he be a Diſturber, if he has not the Right. *R.* 2 *Leo.* 168.

And if a Suit be in the Spiritual Court for ſuch Admiſſion *pendente Lite*, a Prohibition goes. *R.* 2 *Leo.* 168.

The Verdict in a *Jure Patronatûs* does not bind the Right of the Patron; for it is only an Inqueſt of Office. *Hob.* 317.

So it does not bind the Biſhop; for he may admit the Clerk of the other Patron contrary to the Verdict in a *Jure Patronatûs*, if he will. *Hob.* 317.

But it will be at his Peril; for he will be a Diſturber, if the Patron of the Clerk admitted has no Title. *Hob.* 317.

And the Patron, for whom the Verdict was in the *Jure Patronatûs*, ſhall have an Action upon the Caſe for his Damage and Expence in ſuing a *Quare Impedit*, if he does not make the Biſhop a Party to the Suit. *Hob.* 318.

But a Verdict in a *Jure Patronatûs* binds all; that the Biſhop ſhall not be a Diſturber, if he admits the Clerk, for whom the Verdict is found, tho' the other Patron afterwards recovers. *Hob.* 317.

## (L) Induction; By whom it ſhall be made.

AFTER Inſtitution the Biſhop makes a Mandate to the Arch-deacon to make Induction; before which the Clerk is not compleat Incumbent.

Or the Biſhop may give his Mandate to other than the Arch-deacon, if he pleaſes.

Or, by Preſcription or Compoſition, another may claim a Right to make Induction. 11 *H.* 4. 9.

The Arch-deacon need not make Induction in Perſon, but may give Authority to another Clerk within his Juriſdiction to make it.

Or, he may direct his Precept *omnibus & ſingulis Rector' Vicar' Cleric' & Literat' infra Archidiaconat' meum, &c.*

So, if it be by a Clerk out of his Arch-deaconry, it will be good.

If the Biſhop dies after a Mandate to the Arch-deacon and before Induction, yet he may afterwards induct. *R. cont. but the Judgment afterwards reverſed.* 1 *Vent.* 309, 319. 2 *Jon.* 78.

But, if the Guardian of the Spiritualties inſtitutes, and makes a Mandate for Induction, and before Induction made, a new Biſhop is conſecrated; the Mandate becomes void. *R.* 2 *Lev.* 199.

If the Arch-deacon refuſes Induction, he may be ſued in the Spiritual Court.

Or an Action upon the Caſe lies againſt him. 1 *Vent.* 309. *F. N. B.* 47. *H.*

And the Biſhop cannot revoke his Mandate. 1 *Vent.* 309.

So a Prohibition of the Execution of the Mandate cannot be made by the King. 1 *Vent.* 309.

Before Induction the Clerk has not Seiſin of the Poſſeſſions of the Church. 2 *Inſt.* 358.

Nor can he grant.

Or ſue for Tithes.

## (M) When a Church ſhall be full.

A Church is full, as againſt a Common Perſon, by Admiſſion and Inſtitution, before Induction: And therefore, after Inſtitution, the rightful Patron cannot preſent; but ought to have his *Quare Impedit.* 2 *Rol.* 349. *l.* 25. 2 *Inſt.* 358.

And therefore, in a *Quare Impedit* by the King, or him who makes Title by the King, it is ſufficient to alledge a Preſentation, upon which the Clerk was admitted, and inſtituted, without ſaying, inducted. *R. Bend. pl.* 297. *Vide Pleader,* (3 I. 5.)

And if *A.* be preſented, and inſtituted, and afterwards *B.* is preſented, inſtituted, and inducted, it ſhall be void. 3 *Sal.* 195.

So, by Admiſſion, Inſtitution, and Induction, the Church is full againſt the King; for he cannot preſent another, tho' he has Right; but ought to have his *Quare Impedit,* 2 *Rol.* 349. *l.* 45. 2 *Inſt.* 358.

So he cannot preſent the ſame Clerk, who is preſented by Uſurpation; for it does not amount to a Surrender and new Preſentation. 2 *Rol.* 349. *l.* 51.

So he cannot preſent a Clerk before preſented, *ad corroborandum,* but ought to make an expreſs Grant. 1 *Sal.* 162.

By Admiſſion, Inſtitution, and Induction, a Church ſhall be full, tho' the Preſentee was *merè Laicus. R. Dy.* 293.

But if a Biſhop collates within 6 Months, or before Notice to the Patron, where Notice is neceſſary, *&c.* tho' a Lapſe to the Metropolitan be thereby prevented, the Church is not full by ſuch unlawful Collation: but the Patron may preſent without a *Quare Impedit. Vide Ante,* (H. 15.)

So, if the King preſents *Ratione Lapſûs, &c.* where he miſtakes his Title, tho' there be Inſtitution and Induction upon it; for the King is deceived, and the Preſentation being void, Inſtitution upon it is in the Nature of a Collation. *R.* 6 *Co.* 29. *b. R. Hob.* 302.

Yet, as to all but the rightful Patron, he is Incumbent; for he ſhall ſue for Tithes, may take a Confirmation from the King, *&c. Hob.* 302.

## (N) When a Church becomes void.

### (N. 1.) By Death, or Ceſſion.

A Church becomes void by the Death of the Incumbent, which is the Act of God; or, by Ceſſion, or Reſignation, which are the Acts of the Party; or, by Act of Law, as Simony, Non-reſidence, Deprivation, &c.

If an Incumbent dies, his Benefice becomes void, and the Patron, without Notice, ought to preſent within 6 Months. *Vide Ante*, (H. 9, 11, &c.)

So, if the Incumbent makes a Ceſſion; as, if he be created a Biſhop, all his Eccleſiaſtical Benefices become void, without a Diſpenſation *retinere in Commendam*. 11 *H.* 4. 7, 37, 60. *Vide Ante*, (H. 6.)

Tho' it be a Benefice in another Dioceſe.

Or another Kingdom under the Dominion of the King.

Tho' it be a Benefice *ſine Curâ*, as well as, *cum Curâ Animarum*.

If he be made a Biſhop of *Ireland*. *Pal.* 345, 349. *Vide Ante*, (H. 6.)

If he be created Biſhop of the *Iſle of Man*. *Pal.* 345.

If a Biſhop were made a Cardinal. 4 *Inſt.* 357.

And it ſhall be void without a declaratory Sentence. *Jon.* 337.

But a Benefice is not void by Acceptance of a Biſhoprick, till Conſecration.

Nor, if he be only a titular Biſhop.

Or a Suffragan Biſhop.

Or a Biſhop in *Italy*, or other foreign Kingdom. *Pal.* 349.

### (N. 2.) By Reſignation.

So, if an Incumbent reſigns his Church, by proper Words, to his Ordinary, who accepts it, the Church is void.

So two, by the ſame Writing, may agree to exchange their Churches, and with ſuch Intent to reſign them to the Ordinary; and if ſuch Exchange be compleated in the Life of the Parties, it ſhall be good.

And ſuch Reſignation ought to be by proper Words; as, *Renuncio*, *Cedo*, *Dimitto*, *&c.*

So, if a Man gives, grants, renders, and confirms to the Ordinary a Prebend, it ſhall be good.

If a Man makes a Reſignation of a Church to the Biſhop of the Dioceſe, it ſhall be good, generally.

Or, of a Donative to the Patron.

Or, to the Patron and a Stranger; for as to the Stranger it is void.

If he makes a Reſignation of a Deanery, Prebend, *&c.* of the King's Donation, to the King, it ſhall be good.

A Reſignation to him, who is not the proper Ordinary, nor can make Inſtitution, is void.

So a Reſignation ſhall be void, if it be upon Condition to preſent ſuch an one: for it ought to be made *ſponte*, *purè*, *& ſimpliciter*.

So a Reſignation till Acceptance by the Biſhop is not valid, and a Preſentation by the King before, is void. *R.* 2 *Cro.* 197.

### (N. 3.) By Simony.

So, by the *St.* 31 *El.* 6. If any, for Reward, Promiſe, *&c.* directly or indirectly preſent, collate, *&c.* to any Benefice or Eccleſiaſtical Promotion, ſuch

ſuch Preſentation and the Admiſſion, &c. thereon ſhall be void, and the Queen ſhall preſent for that one Turn only; and any Perſon who ſhall give or take any ſuch Money, Promiſe, &c. ſhall forfeit 2 Years Profits of ſuch Benefice; and any Perſon corruptly taking ſuch Benefice ſhall be diſabled for ever to have the ſame Benefice.

And if any, for Money, (other than lawful Fees,) Promiſe, &c. directly or indirectly inſtitute, induct, &c. any to any Benefice, &c. he ſhall forfeit two Years Profits, and the Benefice ſhall be void, and the Patron preſent, &c.

Simony is *Voluntas emendi, vel vendendi Spiritualia, aut Spiritualibus annexa.* *Cro. El.* 789.

As, if a Biſhop takes above the Fees allowed, for granting Orders, Inſtitution, &c. *R. Carth.* 485.

By the Canon Law, it was a Cauſe for Deprivation.

And a Church ſhall be void by the *St.* 31 *El.* 6. if the Clerk makes a Gift, Promiſe, &c. of any Benefit to the Patron: As, if he agrees to make a Leaſe to the Patron of his Tithes, for ſuch a Rent.

If he agrees with the Patron for ſo much for the next Avoidance, when the Incumbent is ſick. *Cont. per* 3 *J. And. acc. Cro. El.* 686. *Mo.* 916. *R. acc. Win.* 63. [illegible]

If he agrees for 90 *l.* with the Patron to preſent him when the Church becomes void, and for Security takes a Grant of the next Avoidance to *B.* in Truſt. *R.* 1 *Brownl.* 164.

If after an Avoidance and *Quare Impedit*, by a Mortgagee upon the Preſentation of a Stranger, the Heir of the Mortgagor has a Decree in Equity for Redemption, and that he ſhall recover the Preſentation in the Name of the Mortgagee, and then he articles for Sale of the Advowſon to *A.* and that he ſhall preſent ſuch Perſon as *A.* ſhall name, who names *B.* and this was with Intent that *B.* ſhould be preſented; It is Simony. *R.* 3 *Lev.* 116.

So, if *A.* agrees for Money to reſign, or to make another his Curate. *R. Carth.* 485.

So, if the Father or Friend of a Clerk makes a Simoniacal Contract with the Patron, or with his Wife, or Friend, without his Privity; tho' the Clerk is not privy to the Contract, the Church ſhall be void. 1 *Brownl.* 165. *R.* 3 *Lev.* 337. *Lut.* 1090, 1093.

Or makes a Promiſe, without the Privity of the Clerk, that he ſhall make a Leaſe of his Tithes to the Patron, which the Clerk afterwards does.

So, if a Man preſents by Uſurpation, upon a Simoniacal Contract. 3 *Inſt.* 153.

So, by the *St.* 12 *An.* 12. If any after 29th *September* 1714. for Money, Promiſe, &c. directly or indirectly take, procure or accept the next Avoidance in his own or another's Name, and be preſented or collated thereon, the Preſentation, &c. ſhall be void and the Contract Simoniacal, and the Queen preſent or collate for that Turn.

If a Church be void, every One may take Advantage of it: As, a Pariſhioner in a Suit againſt him for Tithes.

If the Patron be privy to the Simoniacal Contract, he ſhall loſe the Profits of the Benefice for two Years, and the King ſhall have the Preſentation *pro hac Vice.*

And the Computation of the Profits ſhall be according to the real Value; not according to the Valuation 26 *H.* 8. 3 *Inſt.* 154.

So, tho' the Patron be not privy to it, the King ſhall have the Preſentation. *Semb. Lut.* 1087.

And the Church continues void, tho' the Simony be pardoned by Parliament. *R. Cro. El.* 686.

And the King ſhall preſent, tho' the Incumbent, preſented by Simony, dies; for *nullum Tempus occurrit Regi*. *R.* 1 *Brownl.* 164.

So, if a Clerk, preſented by Simony, be privy to the Contract, he ſhall be diſabled to be preſented by the King or otherwiſe, for ever. (*Vide* 3 *Inſt.* 153, 4.)

And the King cannot diſpenſe with ſuch Diſability. 3 *Inſt.* 154.

But where the Clerk was not privy, tho' the Church be void, he ſhall not be diſabled to be afterwards preſented. 3 *Inſt.* 154.

So if *A.* preſents upon Simony by Uſurpation; the King ſhall not have the Preſentation, but the rightful Patron. 3 *Inſt.* 153.

So, if a Perſon, preſented by the King to a Church, contracts with *B.* preſented by another Patron, that he will not purſue his Preſentation; it is not a Simoniacal Contract. *Dub.* 2 *Rol.* 464.

So it will not be a Simoniacal Contract, if a Father contracts for the next Avoidance for his Son, without his Privity. *R. Mo.* 916.

If one gives a Bond to reſign upon Requeſt. *R. Ray.* 175. 1 *Sid.* 387. *R.* 2 *Cro.* 248, 274. *R. Cro. Car.* 180. *Hut.* 111. *Jon.* 220.

Yet, if a wrong Uſe be made of ſuch Bond, it may be averred to be made for ſuch Purpoſe, and then it will be void. *R. Mo.* 641. *Acc. Cro. Car.* 180.

So *Chancery* will ſtay a Suit upon it, if a corrupt Uſe be made of it. 1 *Ver.* 411, 2.

## (N. 4.) By Non-Reſidence.

By the Canon Law, every one, who had *Curam Animarum* was bound to perpetual Reſidence. *St. Eccl. Caſes* 27.

By *Can. Steph. Arch. in Concilio Oxon' Epiſcopi in Eccleſiis Cathedral' reſidere procurent in majoribus Feſtis, &c. Lind.* 131.

By another *Can. ibid. Epiſcopus Nullum ad Vicariam admittat niſi velit perſonaliter miniſtrare, & ſi non ſit ultra* 5 *Marcas, niſi reſideat, &c.*

*Et reſidere debet cum Effectu, viz. continuè in Beneficio morari. Lind.* 131.

By *Can. Othon.* 1236. *Ad Vicariam nullus admittatur, niſi juret Reſidentiam facere, & eam faciat continuè. Conſt. Oth.* 26, 27.

So Non-Reſidence has been often condemned in Parliament.

And now, by the *St.* 21 *H.* 8. 13. All Spiritual Perſons, promoted to any Archdeaconry, Deanery, or other Dignity in a Cathedral, or other Church, or beneficed with any Parſonage or Vicarage, ſhall be perſonally reſident on ſuch Dignity or Benefice; and if he abſent himſelf wilfully one Month together, or two Months at ſeveral Times in one Year, and keep not Reſidence at one of his Dignities, Prebends, or Benefices, he ſhall forfeit 10 *l.* a Moiety to the King, a Moiety to him that will ſue, *&c.*

So he ought to reſide at the Parſonage-Houſe; for if he lets it, tho' he dwells at another Houſe in the ſame Pariſh, it will be within the Statute. *R.* 6 *Co.* 21. *b. Mo.* 540. *Cro. El.* 590. *Semb.* 2 *Brownl.* 54.

Tho' he occupies the Parſonage by a Servant and does not let it, but dwells in another Houſe. *Semb.* 2 *Brownl.* 54.

By the *St.* 13 *El.* 20. No Leaſe, *&c.* ſhall be good longer then the Leſſor is reſident, without Abſence above 80 Days in one Year. *Vide Eſtates*, (G. 4.)

So, if a Man has a Vicarage in a Cathedral, and another Benefice with Cure; it is not ſufficient that he be reſident upon his Vicarage, for that is only nominal: and where a Perſon has 2 Benefices, one only nominal, he ought to reſide upon the real Benefice. *R.* 27 *H.* 8. 10. *b.*

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An Information, or Debt by *Qui tam, &c.* lies upon the Statute for Non-Reſidence. *Vide Pleader*, (2 S. 23.)

But the *St.* 21 *H.* 8. 13. As to Non-Reſidence, does not extend to any Spiritual Perſon in the King's Service beyond Sea, or in Pilgrimage, going or returning, nor to a Scholar abiding for Study at any Univerſity within the Realm or without, nor to a Chaplain of the King, Queen, or any of their Children, Brethren, or Siſters, during Attendance in their Houſeholds, nor to any Chaplain of any Archbiſhop, Biſhop, Lord Spiritual or Temporal, Dutcheſs, *&c.* Lord Chancellor, Treaſurer, Chamberlain, or Steward of the Houſehold, Treaſurer, or Comptroller of the Houſehold, Knight of the Garter, Chief Juſtice of the King's Bench, Warden of the Ports, Maſter of the Rolls, King's Secretary, Dean of the Chapel, or Almoner, during Attendance, without Fraud, in their Houſes.

Nor to the Maſter of the Rolls, Dean of the Arches, Chancellor, or Commiſſary of any Archbiſhop or Biſhop, Maſters in *Chancery*, Advocates in the Arches during their Offices, nor to a Spiritual Perſon bound to daily Appearance by Injunction of *Chancery*, or the King's Counſel, to anſwer the Law: And the King may give Licence of Non-Reſidence to any of his own Chaplains.

Nor, by the *St.* 25 *H.* 8. 16. to the Chaplain of any Judge, Chancellor, or Chief Baron of the *Exchequer*, Attorny or Solicitor General, attending in his Houſe, or on his Perſon.

Nor by the *St.* 33 *H.* 8. 28. to the Chaplain of the Chancellor of *Lancaſter*, Chancellor of the Augmentations, Groom of the Stole, *&c.*

So the *St.* 21 *H.* 8. 13. does not extend to a Spiritual Perſon not wilfully abſent: As, if there be no Houſe upon the Rectory. 6 *Co.* 21. *b.*

And therefore, an Information is bad, if it ſays *abſentavit*, omitting *voluntariè*. *R. Cro. El.* 100.

If he be impriſoned, without Covin. 6 *Co.* 21. *b.*

If he be removed by Advice of Phyſicians, without Fraud, for Recovery of his Health. *R.* 6 *Co.* 21. *b.* *R.* 2 *Bul.* 18.

So the Statute does not extend to an Archbiſhop, or Biſhop.

So the Statute does not extend to him, who reſides upon the one or the other of his Benefices, or Dignities, if he has a Diſpenſation.

But a Goſpeller, or a Vicar in a Cathedral, is not a Benefice or Dignity, which excuſes his Reſidence. *Per* 2 *J. Cro. El.* 663.

Yet by the *St.* 28 *H.* 8. 13. No Perſons above 40 ſhall be excuſed from Reſidence in Reſpect of his Studies in the Univerſity, unleſs the Chancellor, Vice-Chancellor, Commiſſary, Heads of Houſes, Doctors of the Chair, Readers of Divinity in the Schools, or of Law, Phyſick, *&c.* Profeſſors of Hebrew, Greek, *&c.* and Perſons attending for their Degrees.

Nor under 40, unleſs they attend Lectures, Diſputations, and Exerciſes according to the Statute.

## (N. 5.) By Plurality.

By the Council of *Lateran* 1215. 29. *Siquis Beneficium cum Curâ recepit, ſi prius tale habuerit, eo ſit ipſo jure privatus: Et ſi in eâdem Eccleſiâ plures habeat Dignitates aut Parſonat', etiamſi Curam non habeant, poterit tamen diſpenſari, &c.* (N. 5.) When the firſt Church ſhall be void by it.

And therefore, by the Canon Law received here, if any having a Benefice with Cure, accepts another with Cure, the firſt ſhall be void. *R.* 4 *Co.* 75.

Tho' the 2d Benefice be under 8 *l. per Ann.* *Act. Vau.* 131. *Jon.* 404.

And thereupon the Patron, if he will, may preſent without Sentence of Deprivation. *R.* 4 *Co.* 75. *b.* *R. Cro. Car.* 357. *Jon.* 337.

And a ſubſequent Diſpenſation purſuant to the *St.* 25 *H.* 8. 21. is too late, and does not take away the Right veſted in the Patron to preſent. *R. Jon.* 404.

So now, by the *St.* 21 *H.* 8. 13. If any, having a Benefice with Cure of Souls of 8 *l. per Ann.* or above, take any other with Cure, and be inſtituted and inducted, immediately after the firſt ſhall be void, and any Diſpenſation, *&c.* ſhall be void.

The Valuation ſhall be eſtimated according to the Value returned 26 *H.* 8.

So the firſt Benefice ſhall be void upon Inſtitution to the ſecond, before Induction; tho' a Lapſe does not incur till 6 Months after Induction. *Mo.* 448.

And it ſhall be void, tho' he procures the 2d Benefice to be united to the firſt, after his Inſtitution to the firſt. *Hob.* 158.

Tho' he ſubſcribes the 39 Articles, but afterwards does not read them within two Months; whereby the 2d Benefice is alſo void. *R. Vau.* 131. *Vide Poſt*, (N. 7, 10.)

So, if he takes a Dignity, as a Deanery, Arch-deaconry, *&c.* without a Diſpenſation. *Semb.* 1 *Leo.* 316. *Vide Poſt*, (N. 6.)

Or, if a Dean takes another Dignity.

Or, a Dean, Prebendary, *&c.* takes another Prebend in the ſame Church.

So it ſhall be void to all Intents: for he cannot ſue for Tithes. *R. Cro. Car.* 357. *Jon.* 337, 8. 340.

Otherwiſe, till Deprivation, where the former is under 8 *l. per Ann.*

So a Pardon by the King of his Title by Lapſe does not reſtore him. *R. Jon.* 339.

So, if the firſt Benefice be under 8 *l. per Ann.* it will be void by the Canon Law, if he takes a 2d without a Diſpenſation: and therefore he may be deprived. *Vide ſupra.*

How a Diſpenſation for a Plurality may be granted, *Vide* in *Prærogative*, (D. 18, &c.)—*Vide Poſt*, (N. 8.)

(N. 6.) When not. If he takes a Dignity.

But if a Man, having a Benefice with Cure of 8 *l. per Ann.* with a Diſpenſation, takes a Dignity which has no Cure, the firſt is not void: as, if he be made Dean of a Cathedral. By the *St.* 21 *H.* 8. 13.

Or Treaſurer, Chancellor, Prebendary, Chaunter of a Cathedral or Collegiate Church. By the *St.* 21 *H.* 8. 13.

Or Archdeacon.

So, by *the ſame Statute*, If he takes a Parſonage that hath a Vicar endowed, or Benefice appropriate.

So, if a Man, having a Benefice with Cure, be created a Biſhop, the Benefice is not void by Force of that Statute, tho' it be by the Common Law. *Hob.* 157.

Neither will it be void by the Common Law, till he be conſecrated a Biſhop. *Pal.* 346.

(N. 7.) Or, is not Incumbent of the Second.

So, if he is not compleat Incumbent of the 2d Benefice: As, if a Man, having a Benefice with Cure, takes another Benefice with Cure, and is inducted, but does not ſubſcribe the 39 Articles; the former is not void, for he never was Poſſeſſor of the Second. *Wat. Ch.* 3. *Vide Ante*, (N. 5.)—*Poſt*, (N. 10.)

So, if he be preſented to the 2d by Simony. *Wat. Ch.* 3.

Or does not ſubſcribe the Articles before the Ordinary himſelf. *Wat. Ch.* 3.

So, by the *St.* 21 *H.* 8. 13. Brothers, and Sons of any Temporal Lord, or Knight, born in Wedlock, may purchaſe a Diſpenſation, to take two Parſonages, or Benefices with Cure. (N. 8.) If he has a Qualification: Who may have it.

And Doctors, and Batchelors of Divinity, or Laws, admitted to the ſaid Degrees in any of the Univerſities of this Realm, and not by Grace only.

So, *by the ſame Statute*, All Spiritual Men of the King's Council may have a Diſpenſation for 3 Benefices with Cure.

And all the Chaplains of the King, Queen, or any of the King's Children, Brethren, Siſters, Uncles, or Aunts, may purchaſe Diſpenſation to take two Parſonages or Benefices with Cure.

So may 6 Chaplains of any Archbiſhop, or Duke.

And 5 Chaplains of any Marquis, or Earl, and 4 Chaplains of any Viſcount, or Biſhop.

And 3 Chaplains of the Chancellor of *England*, of any Baron, or Knight of the Garter.

And 2 Chaplains of any Dutcheſs, Marchioneſs, Counteſs, or Baroneſs, being Widows.

And 2 Chaplains of the King's Treaſurer, and Comptroller of his Houſe, Secretary, Dean of his Chapel, Almoner, Maſter of the Rolls.

And one Chaplain of the Chief Juſtice of the King's Bench, and Warden of the *Cinque Ports*.

So, by the *St.* 26 *H.* 8. 14. a Biſhop Suffragan.

So, if the King himſelf preſents his Chaplain, it is ſufficient, without other Diſpenſation: for that imports a Diſpenſation, which the King as Supreme Ordinary may grant. *R.* 1 *Sal.* 161. *D. Sav.* 135.

So, a Chaplain of a Duke, Marquis, Earl, Baron, *&c.* being under the Age of Diſcretion, and in Ward of him, who has Chaplains, may be retained, and qualified by ſuch Retainer.

And a Qualification before impleading, tho' it be not before the Taking of the ſecond Benefice, is ſufficient. *R. Sav.* 135.

If a Peer, *&c.* retains above his Number, thoſe firſt retained only ſhall be qualified. *R. Sav.* 101.

If all be retained together, thoſe firſt advanced.

And the Retainer of any one after his Number does not avail, tho' he be firſt advanced.

Tho' a former Chaplain be advanced, and afterwards diſmiſſed. *R. Sav.* 79.

But the Preſentee of a Subject, tho' qualified, cannot take a Plurality, without a Diſpenſation before his Inſtitution to the ſecond Benefice. *R.* 1 *Sal.* 161. (N. 9.) Who not.

So a Peer, *&c.* who has ſeveral Capacities, cannot qualify more than his higheſt Capacity allows.

If a Dutcheſs, *&c.* marries a Duke, *&c.* ſhe cannot afterwards retain, during Coverture.

But her Chaplains, before retained, continue, if not diſcharged by the Huſband.

If a Peer, *&c.* retains above his Number, the Retainer ſhall be void; tho' a former Chaplain dies, if he does not retain him *de novo* after the Death of the other. *Per* 3 *J.* 1 *And.* 200.

So a Retainer before he be a Peer, *&c.* is void, tho' the Chaplain afterwards continues in Service, if he be not retained *de novo*.

So a Retainer becomes void, if before his Advancement, his Maſter loſes his Office, *&c.* or dies, or is attainted.

So

So a Retainer is of no Avail, if he be diſmiſſed before his Advancement.

So a King's Chaplain extraordinary is not qualified to take a 2d Benefice. *R.* 1 *Sal.* 161, 2.

Nor a Chaplain retained, but not by Letters Teſtimonial under Hand and Seal: as, if they be only ſigned, or only ſealed. *Godb.* 41.

So, if retained only by *Parol*, tho' he officiates in the Family as Chaplain. *D. cont. Sav.* 135.

So, if the Number which he may retain be advanced, the Retainer of another afterwards does not give a Qualification. *R.* 1 *And.* 200.

So the Son of a Biſhop is not qualified to take a Diſpenſation for two Benefices.

Nor the Baſtard of a Temporal Lord.

Nor the Son of a Baronet; for it is a Dignity created ſince the Statute.

## (N. 10.) By not reading the 39 Articles, &c.

So, by the *St.* 13 *El.* 12. If a Layman, or a Deacon, under the Age of 23, be preſented and admitted to a Benefice with Cure, or if any be admitted to a Benefice with Cure of 30 *l. per Ann.* in the Queen's Books, unleſs he be Batchelor in Divinity, or Preacher allowed by ſome Biſhop, or Univerſity, or if any be admitted to a Benefice with Cure, who ſhall not have firſt ſubſcribed the 39 Articles in the Preſence of the Ordinary, the Admiſſion, &c. ſhall be void, or if he ſhall not within 2 Months after his Induction publickly read the Articles in the Church in Time of Common Prayer there, and declare his Aſſent thereto, he ſhall be *ipſo facto* deprived. (*Vide Eccleſiaſtical Perſons*, (C. 8.)

By not reading the Articles the Church is void, without Sentence of Deprivation. *R. Cro. El.* 680.

*See 13. & 14. Ch. 2. c. 4. and 23. G. 2. c. 28.*

## (N. 11.) Notice of the Avoidance to the Patron.

If a Church becomes void by Reſignation, or Deprivation, a Lapſe does not incur till Notice of the Avoidance given to the Patron, and ſix Months afterwards elapſed. *Vide Ante*, (H. 9.—N. 1.)

So, if it becomes void by not reading the 39 Articles. By a Clauſe in the *St.* 13 *El.* 12.

So, if a Lay-Patron preſents, and the Ordinary refuſes him, he ought to give Notice of the Refuſal to the Patron, if he be refuſed for a Cauſe within his proper Conuſance, or of which the Judgment belongs to him: as, that he was an Heretick, Schiſmatick, &c. *Vide Ante*, (I.)

## (N. 12.) The Writ *de Vi Laicâ amovendâ.*

If a Clerk be by Force of Laymen kept out of his Church or Parſonage-Houſe, upon Application to *Chancery*, he ſhall have a Writ *de Vi Laicâ amovendâ*, by which the Sheriff ſhall take the *Poſſe Comitatûs*, and ſhall attach all who reſiſt, and amove the Force. *F. N. B.* 55. *A.*

So, upon the Biſhop's Certificate of ſuch Force, a Writ ſhall iſſue. *F. N. B.* 54. *D.*

So the Writ ſhall iſſue, if the Preſentee of the King be prevented of his Poſſeſſion. *F. N. B.* 54. *F.*

Or the Archdeacon be prevented, by Force, from making Induction.

The Writ *de Vi Laicâ amovendâ* ſhall be returnable in *B. R.* or *C. B.* *F. N. B.* 54. *G.*

Or, it ſhall not be returnable, at the Election of him who ſues it. *F. N. B.* 54. *G.*

And upon ſuch Writ the Sheriff ought to remove the Force, and put the Incumbent into the Enjoyment of his Poſſeſſion. *F. N. B.* 54. *H.*

So he may commit the Offenders to Gaol, and return his Writ to *B. R.* where they ſhall be fined. *Mo.* 782.

And if the Sheriff does not ſerve nor return the Writ, an *Alias*, *Pluries*, and Attachment lie againſt him, directed to the Coroners. *F. N. B.* 54. *E.*

But the Sheriff ſhall not remove the Incumbent, whether his Poſſeſſion be by Right, or by Wrong. *F. N. B.* 54. *H.* *

* [And if he does, the Incumbent ſhall have a Writ directed to the Sheriff, that without Delay he make him Amends. *F. N. B.* 54. *H.* And if he does not ſo do, an *Alias*, *Pluries*, and Attachment lie againſt him. *F. N. B.* 54. *H.*]

So, upon an *Affidavit* of it in *Chancery*, Reſtitution ſhall be awarded. *R. Mo.* 782.

And in ſuch Caſe the Writ ſhall be returnable in *Chancery*, not in *B. R.* *R. Mo.* 782.

# ESQUIRE.

*Vide Dignity*, (B. 8.)

# ESSOINE.

*Vide Exoine.*

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# ESTATES.

## (A) Eſtate in Fee Simple.

### (A. 1.) Of what Things a Man may have it.

AN *Eſtate* imports the Intereſt which a Man has in Lands. *Co. L.* 345. *a.*

Every one, who has an Eſtate in Land, has the Inheritance, the Freehold, or a Chattel Intereſt.

Every Eſtate of Inheritance is a Fee Simple, or a Fee Tail.

An Eſtate in Fee Simple is, where a Man has an Eſtate in Lands or Tenements to him and his Heirs for ever. *Lit. S.* 1.

A Man may have an Eſtate in Fee Simple of all Lands, or Tenements, or other Things Real. *Co. L.* 1. *b.*

Of Lordſhips, Advowſons, Commons, Eſtovers, and all Hereditaments. *Co. L.* 4. *a.*

So a Man may have an Eſtate in Fee Simple deſcendible to him and his Heirs in the Iſle of *Man*; tho' it be not Parcel of the Realm, but a diſtinct Territory: for it is grantable by the King under the Great Seal, and there-

fore the Eſtate in it ſhall be deſcendible according to the Rules of the Common Law. *Co. L.* 9. *a.*

So he may have a Fee Simple in Things mixt; As, in Franchiſes, Liberties, *&c.* *Co. L.* 2. *a.*

So, if a Man grants to another and his Heirs all Woods, Underwoods, Timber-Trees or others in ſuch a Part of a Foreſt, ſaving the Soil; the Grantee has a Fee to take *in alieno Solo.* *R.* 8 *Co.* 137. *b.*

So, in Things Perſonal; As, in an Annuity. *Co. L.* 2. *a.*

In a Dignity granted to him and his Heirs. *Co. L.* 2. *a.*

In a Swan-Mark. 7 *Co.* 17.

In a Part or Share of the New-River-Water. *Ca. Parl.* 207.

So, in the Patronage of an Hoſpital, or other Thing created *de novo*, in which there was not a precedent Eſtate, a Man may have a Fee to him and his Heirs, qualified in a particular Manner: As, if a Queen Conſort inſtitutes an Hoſpital, and reſerves the Patronage *ſibi & Reginis Angliæ ſuccedentibus.* *R. Ca. Ch.* 214.

But in Eſtates *in Eſſe* before ſuch deſultory Inheritance it cannot be: As, the Dutchy of *Cornwal* limited to the Prince *& filiis Regis Angliæ primogenitis*, ſhall not be good, except when limited by Act of Parliament. *R.* 8 *Co.* 16. *Vide Roy*, (G.)

So a Limitation of an Advowſon to the Queen, and the Queens her Succeſſors, ſhall not be good without an Act of Parliament: for there is no Perſon againſt whom a Demand may be made. *R. Ca. Ch.* 214.

If a Man gives Land to *A.* and his Heirs of the Part of his Mother; the Words, *of the Part of his Mother*, are void: for none can create a new Inheritance, or Deſcent not allowed by Law. *Co. L.* 13. *a.*

## (A. 2.) By what Words.

A Man cannot have a Fee Simple by Feoffment, or Grant, without the Words, *to him and his Heirs.* *Co. L.* 1.

And therefore, if he purchaſes to him *in perpetuum*, he has only for Life. *Lit. S.* 1.

Or, *to him and his Aſſigns for ever.* *Lit. S.* 1.

So, if he purchaſes to him and his *Heir* in the Singular Number. *Co. L.* 8. *b.* *Cont. per* 2 *J.* 1 *Rol.* 832. *K.*

To him *or* his Heirs, in the Disjunctive. *Co. L.* 8. *b.*

So, if it be to *A. & B. & hæredibus*, without ſaying, *ſuis*, it ſhall be void for the Incertainty. *Co. L.* 8. *b.* 1 *Rol.* 833. *l.* 20.

Tho' a Warranty be added to them *& hæredibus ſuis:* for this cannot enlarge it. 1 *Rol.* 833. *l.* 25.

So, if by Deed, reciting an Agreement to convey to *A.* and his Heirs, a Man grants *Eſtovers* for Eaſement of him and his Heirs by Aſſignment, and if no Aſſignment that he and his Heir ſhall cut; *A.* has only for Life. *R.* 1 *Leo.* 2.

So, if a Natural Perſon purchaſes to him *and his Succeſſors*, he has only for Life. *Co. L.* 8. *b.*

So, if a Body Politick takes in its natural Capacity: As, a Leaſe to a Dean, *&c.* for 100 Years, and afterwards a Releaſe to him *and his Succeſſors*, it gives to him only for Life: for he takes the Leaſe in his natural Capacity. *Co. L.* 9. *a.*

So, if a Corporation ſole, as a Biſhop, Parſon, *&c.* purchaſes, he has not a Fee without the Word, *Succeſſors.* 1 *Rol.* 832. *l.* 50.

But a Feoffment to *B. & hæredibus*, without ſaying, *ſuis*, gives him a Fee Simple. *Co. L.* 8. *b.*

So, to a Son *and the Heirs of his Father. Semb. Co. L.* 220. *b.*

So, to *B. & Liberis ſuis* and their Heirs; if he has Iſſue, it gives them a Joint-Eſtate in Fee. *Co. L.* 9. *a.*

So, to *B. hæredibus & ſucceſſoribus ſuis*, gives a Fee. *Co. L.* 9. *a.*

So a Feoffment or Grant to a Body Politick and *their Succeſſors*, gives them a Fee Simple. *Co. L.* 8. *b.*

So a Grant to the King *in perpetuum* gives him a Fee, without the Words, *his Heirs* or *Succeſſors:* for he never dies. *Co. L.* 9. *b.*

So a Feoffment to a Corporation Aggregate *in perpetuum* gives a Fee: for it never dies. *Co. L.* 9. *b.* 1 *Rol.* 832. *l.* 55.

Or, to a Corporation Sole, to be held in *Frankalmoigne. Co. L.* 9. *b.* 1 *Rol.* 833. *l.* 5.

So, if *A.* re-enfeoffs *B. adeo plene as B. enfeoffed him*, he has a Fee without the Word, *Heirs. Co. L.* 9. *b.* Q. 1 *Rol.* 833. *l.* 12.

So a Grant to the Church of *B.* gives a Fee without the Word, *Heirs*, or, *Succeſſors.* 1 *Rol.* 833. *l.* 3.

And a Limitation *to the right Heirs of B.* gives a Fee, without the Words, *and their Heirs.* 1 *Rol.* 833. *l.* 16.

So, by Deviſe, a Fee may be given without the Words, *his Heirs. Co. L.* 9. *b. Vide Deviſe*, (N. 4.)

Or, by Fine *ſur Conuzance de droit come ceo, &c. Co. L.* 9. *b.*

Or, by a Common Recovery. *Co. L.* 9. *b.*

So a Fee paſſes without the Words, *his Heirs*, where a Man gives Land with his Daughter, *&c.* in *Frankmarriage. Co. L.* 9. *b.*

If a Parcener, or Joint-tenant releaſes to his Companion. *Co. L.* 9. *b.*

If the Lord, *&c.* releaſes to the Terretenant; which enures by way of Extinguiſhment. *Co. L.* 9. *b.*

If a Man releaſes a mere Right; As, where a Diſſeiſee releaſes to the Diſſeiſor all his Right. *Co. L.* 9. *b.*

So, if a Rent be granted upon Partition, for Owelty of Partition. *Co. L.* 9, 10.

So, if a Peer be ſummoned to Parliament by Writ, he has a Fee in his Dignity, without the Word, *Heirs. Co. L.* 9. *b. Vide Dignity*, (C. 3.)

So, by the Foreſt-Law, if the King at a Juſtice-Seat, grants to another an Aſſart *in perpetuum*, without more, he has a Fee. *Co. L.* 10. *a.*

So, by Cuſtom, a Grant of a Copyhold, *ſibi & ſuis*, or, *ſibi & Aſſignatis*, may give the Inheritance. 4 *Co.* 29. *b. Vide Copyhold*, (C. 7.)

## (A. 3.) By what Means.

A Man takes a Fee by Deſcent, or by Purchaſe.

When he takes by Deſcent, and how it ſhall deſcend, *Vide in Diſcent*, (A.—C. 1, &c.)

A Man may purchaſe a Fee Simple by Feoffment.

Or, by Fine, or Common Recovery; which are of the Nature of a Feoffment upon Record.

So, by Grant, or by Exchange, Releaſe, or Confirmation, which are in the Nature of a Grant.

So, by Bargain and Sale. *Vide Bargain and Sale*, (B. 1, &c.)

So, by Covenant to ſtand ſeiſed. *Vide Covenant*, (G. 1, &c.)

So, by Deviſe. *Vide Deviſe*, (N. 4.)

So a Man may gain a Fee by Wrong: As, by Diſſeiſin, Abatement, or Intruſion.

## (A. 4.) When there may be a Fee upon a Fee.

A Man cannot have a more ample, or greater Eſtate of Inheritance than a Fee Simple. *Lit. S.* 11.

And therefore, where a Man is ſaid to be *ſeiſed in Fee*, generally, it ſhall be underſtood in Fee Simple. *Lit. S.* 293.

And Eſtates Tail, and all other particular Eſtates, are derived out of a Fee Simple. *Co. L.* 18. *a.*

And therefore, after a Limitation in Fee Simple, abſolutely, there cannot be another Eſtate in Fee limited: for if Land be conveyed to *A.* and his Heirs, Remainder to *B.* and his Heirs, the Remainder is void. *Co. L.* 18. *a. Vin.* 269. 2 *Cro.* 591.

So, if 2 Fee Simples come to one Perſon, they are united into one Eſtate: As, if Tenant in Tail, the Reverſion to the King, be attainted for Treaſon, whereby the Eſtate Tail is forfeited to the King; yet the King has only one Eſtate in Fee: for the Eſtate forfeited is united to the Reverſion. *Co. L.* 18. *a.*

So, if Tenant in Tail grants his Eſtate to the King. *Co. L.* 18. *a.*

So, if an Eſtate Tail be made to a Villein, by which the Lord enters, and grants his Eſtate to the Donor; the Donor has but one Fee. *Co. L.* 18.

So, by a Grant executed by the Party, a Fee cannot depend upon a Fee tho' the firſt Fee be not abſolute: As, if Land be conveyed to *A.* ſo long as *B.* has Heirs of his Body, the Remainder to *C.* the Remainder is void. *Co. L.* 18. *a. Dub. Vin.* 269. *Acc. Pl. Com.* 29. *b.*

But 2 Fee Simples of the ſame Land may, by Act of Law, be in ſeveral Perſons: As, if a Man gives Land in Tail to a Villein, the Donor has the Reverſion in Fee, and if the Lord enters, he has a Fee determinable upon the Death of the Villein without Iſſue. *Co. L.* 18. *a.*

So a Fee may be limited to another upon a Contingency: As, if Land be to the Uſe of *A.* and his Heirs, and if he dies without Heir in the Life of *B.* then to *C.* and his Heirs; the Eſtate to *C.* is good. *R.* 2 *Cro.* 591.

So, if a Deviſe be to *A.* ſo long as *B.* has Iſſue of his Body, and in want of ſuch Iſſue to *D.* and his Heirs; the Deviſe to *D.* ſhall be good, by way of an executory Deviſe. *Per Vaux.* 270.

So, if a Copyhold be granted to *A.* and his Heirs, and if he dies within Age, and not married, to *B*: it ſhall be good. 2 *Rol.* 791. *l.* 40. *Vide Copyhold*, (C. 11.)

If *A.* deviſes to his eldeſt Son and his Heirs, and other Land to his youngeſt Son and his Heirs, charged with Legacies, and if either Son dies before Entry or Legacy paid, it ſhall be to the Survivor; it ſhall be good to the Survivor. *Dub. Jon.* 17.

## (A. 5.) When it may be variable.

So a Fee ought to be fixt.

And therefore, a Grant to the eldeſt Son of the King, and the eldeſt Sons of him and his Heirs, Kings of *England*, is not good without an Act of Parliament: for the Law does not allow an Inheritance to merge and revive, as often as the King has or has not an eldeſt Son. *R.* 8 *Co.* 17. *b. Vide Roy*, (G.)

So a Feoffment cannot be to the Uſe of *A.* every *Monday*, of *B.* every *Tueſday*, *&c.* 1 *Co.* 87. *a.*

But an Eſtate, certain in Quantity, may be variant as to Place: As, if *A.* has 12 Acres to him and his Heirs to be annually allotted in a Meadow of 80 Acres. *Co. L.* 4. *a.*

So

So it may vary as to the Perſon: As, there may be a Partition, that *A.* ſhall have the Manor of *D.* for a Year, and *B.* the Manor of *S.* and the next Year *A.* the Manor of *S.* and *B.* the Manor of *D.* and ſo *alternis vicibus* for ever. *Co. L.* 4. *a.*

That *A.* ſhall have from *Lammas* to *Eaſter*, *B.* from *Eaſter* to *Lammas*. *Co. L.* 4. *a.*

## (A. 6.) What ſhall be a Fee Simple qualified or conditional.

A Fee Simple Eſtate is abſolute, or qualified or conditional. *Co. L.* 1. *b.*

As, if Land be given to *A.* and his Heirs, Tenants of ſuch a Manor. *Co. L.* 27. *a.*

To the King and his Heirs, Kings of *England*. *Co. L.* 27. *a.*

To *B.* and his Heirs, Lords of the Manor of *D.* *Co. L.* 27. *a.*

So, by Common Law, if a Man conveys Land to another and the Heirs Male of his Body; this will be a Fee Simple conditional. *Co. L.* 19. *a.*

Or, to Huſband and Wife, and the Heirs of their Bodies. 2 *Inſt.* 333.

But a Man cannot create a new Eſtate of Inheritance: And therefore, if a Man conveys Lands to *A.* and his Heirs Male, the Word, *Male*, ſhall be rejected, and he ſhall have it to him and his Heirs. *Lit. S.* 31.

Or, to *A.* and his Heirs Female. *Lit. S.* 31.

If he conveys Lands in *Gavelkind* to *A.* and his eldeſt Heirs, the Cuſtom ſhall not be defeated; for the Word, *Eldeſt*, ſhall be rejected. *Co. L.* 27.

Or, Lands at the Common Law to *A.* and his eldeſt Heirs Female of his Body; all the Daughters ought to inherit. *Co. L.* 27. *b.*

The Grant of the Dukedom of *Cornwal* by the King to his Son, *& ipſius & hæredum ſuorum Regum Angliæ filiis Primogenitis in Regno Angliæ ſucceſſuris*, would not have been good, if not confirmed by Parliament. *R.* 8 *Co.* 16. *The Prince's Caſe*. *Co. L.* 27. *a.*

(A. 7.) What would be a Performance of the Condition.

If an Eſtate, at Common Law, was given to a Man and the Heirs of his Body; by having Iſſue, the Condition was performed, and the Donee might alien. *Co. L.* 19. *a.* 1 *Rol.* 840. *l.* 15.

So, if an Eſtate was given to a Man and the Heirs Male of his Body, the having Iſſue a Son was a Performance of the Condition. *Vide Co. L.* 19. *a.*

But if an Eſtate was given to a Man and the Heirs Male of his Body, who had Iſſue a Daughter; the Condition was not performed. *Co. L.* 19. *a.*

(A. 8.) The Effect of the Condition performed.

If the Condition was performed, he who had the Fee Simple conditional, by the Common Law, might alien his Land. *Co. L.* 19. *a.*

Or might charge it with a Rent, Common, *&c.* *Co. L.* 19. *a.*

Or might forfeit it. *Co. L.* 19. *a.*

But tho' the Condition was performed by having Iſſue, and the Iſſue inherits, the Land does not deſcend to the Heir General: for, if the Donee, or his Iſſue afterwards dies without Iſſue, the Eſtate reverts to the Donor. *Co. L.* 19. *a.*

So, if he dies without Iſſue Male, where the Gift was to him and the Heirs Male of his Body. *Co. L.* 19. *a.*

*Vide Poſt*, (B. 1, &c.)

## (B) Eſtate Tail.

### (B. 1.) The Commencement of it.

AN Eſtate is ſaid to be entailed, when it is aſcertained, what Iſſue ſhall inherit it. *Lit. S.* 18.

By the Common Law, all Eſtates of Inheritance were Fee Simple abſolute, or conditional. *Co. L.* 19. *a.*

But by the *St. W.* 2. 13 *Ed.* 1. 1. The Will of the Giver according to the Form in the Deed of Gift manifeſtly expreſſed ſhall from henceforth be obſerved, ſo that they to whom the Land was given under ſuch Condition ſhall have no Power to alien the Land ſo given, but it ſhall remain to the Iſſue or revert to the Giver, if Iſſue fail.

### (B. 2.) What Tenements may be entailed.

*Vide Copyhold,* (C. 8, 9.)

And therefore, all Lands and Inheritances Corporeal may be entailed. *Co. L.* 19. *b.*

So all Inheritances iſſuing out of them, or which concern or are annexed to Lands and Tenements, or exerciſeable in Land, tho' they cannot be holden. *Co. L.* 20. *a.*

As, Rents, Commons, *Eſtovers, &c. Co. L.* 20. *a.*

The Nomination to a Church. *Co. L.* 20. *a.*

So Offices may be entailed, *Co. L.* 20. *a.* which concern Lands and Tenements. 1 *Rol.* 838. *l.* 4.

As, the Office of Marſhal of *England. Co. L.* 20. *a.* 7 *Co.* 33. *b.*

The Office of Serjeant of *C. B.* or Chamberlain of the *Exchequer. Co. L.* 20. *a. Jon.* 111.

The Office of Foſterſhip, or the Cuſtody of a Church. *Co. L.* 20. *a.* 1 *Rol.* 838. *l.* 5.

The Office of Steward, Receiver, or Bailiff of a Manor. 1 *Rol.* 638. *l.* 10. 7 *Co.* 33. *b.*

So, a Dignity: for a Baron, *&c.* is named of ſome County, Town, or Place. *Co. L.* 20. *a. R.* 7 *Co.* 33. *b.* 1 *Rol.* 837. *l.* 55. *Jon.* 100.

Uſes. *Co. L.* 20. *a. R.* 7 *Co.* 33. *b.*

So, the Dignity of Baronet; if he be created Baronet of ſuch a Place. *R.* 12 *Co.* 81.

So a Villein in Groſs may be entailed: for he is a Thing Real. 1 *Rol.* 812. *l.* 20.

So, Charters. *Co. L.* 20. *a.*

But Perſonal Inheritances, or which concern Chattels merely, cannot be entailed: As, an Annuity. *Co. L.* 20. *a.* 1 *Rol.* 837. *l.* 50.

Or, the Office of Maſter of the Horſe, Hounds, *&c.* for they are merely Perſonal. *Co. L.* 20. *a.*

Nor Things, which do not concern Lands or Tenements, nor are exerciſeable in Lands or Tenements. 1 *Rol.* 837. *l.* 50.

And therefore, if a Baronet be created to him and the Heirs Male of his Body, without mentioning of any Place, he ſhall have a Fee conditional in his Dignity, which will be forfeited for Felony. *R.* 12 *Co.* 81.

So a Leaſe *pur auter vie* cannot be entailed; and if it be limited to one and the Heirs of his Body, Remainder over, the Remainder may be barred by a Surrender, without a Recovery. *Cont.* 2 *Ver.* 184. *R. acc.* 2 *Ver.* 226.

## (B. 3.) By what Words an Eſtate Tail ſhall be created.

An Eſtate Tail ought, regularly, to be limited *to a Man and the Heirs of his Body begotten.*

And therefore, if it be limited to a Man *and his Iſſues*, he has it only for Life; for the Word, *Heirs*, is as neceſſary as to an Eſtate in Fee Simple: for all Eſtates Tail were Fee Simple conditional at the Common Law. *Co. L.* 20. *a.* 2 *Inſt.* 334. 1 *Rol.* 837. *l.* 30.

So a Gift to a Man *& ſemini ſuo*, does not make an Eſtate Tail. *Co. L.* 20. *b.*

Or, to a Man *& exituis*, or, *prolibus de corpore ſuo. Co. L.* 20. *b.*

Or, to *the Iſſues Male of his Body.* 1 *Co.* 103. *b.*

Or, *to the Survivor having Iſſue Male, and to the Iſſue Male of ſuch Iſſue Male. R.* 1 *Rol.* 837. *l.* 35.

So a Gift to a Man *and his Heirs Male*, or, *Heirs Female*, does not make a Tail, but ſhall be a Fee Simple: for it does not limit of what Body the Heirs ought to iſſue. *Co. L.* 27. *a. Lit. S.* 31. *Vide infra.*

Or, to a Man *and his Heirs Male lawfully begotten. R. Cro. El.* 478.

Or, to him *and his Heirs of the Body of his Siſter lawfully begotten:* for he cannot marry his Siſter. *R.* 1 *And.* 310.

Tho' limited by way of Uſe. 1 *Rol.* 837. *l.* 30. *R. Mo.* 424. *Cro. El.* 478.

So the Uſe of a Fine to *A. and his eldeſt Son and the Heirs Male of the Son*, does not make an Entail in *A. R.* 1 *Leo.* 212. *Cro. El.* 220.

So, if he has an expreſs Eſtate for Life, he ſhall not take a Tail by Implication: As, if a Copyhold be ſurrendered to *A. and B. for Life, and for want of Iſſue of B. to D. and his Heirs*; *B.* has not a Tail: for he had an Eſtate expreſly limited for Life. *R. Jon.* 342.

But if a Man gives an Eſtate Tail to *A.* Remainder to *B. in formâ praedictâ*; *B.* has an Eſtate Tail. *Co. L.* 20. *b.* 1 *Rol.* 838. *l.* 35.

If he had given an Eſtate to *A. and the Heirs Male of his Body*, with a Power of Revocation, and afterwards revokes, and gives the ſame Eſtate to *A. and his Heirs Male*, paying 500 *l. &c.* omitting, *of his Body*; it ſhall be an Eſtate Tail. *R.* 3 *Lev.* 214.

So a Gift to *A. and B. and one Heir of their Bodies, and one Heir of ſuch Heir only*, makes an Eſtate Tail. *Co. L.* 22. *a.* 39 *Aſſ.* 20. *Qu. Perk. Sect.* 171. *Semb. cont. Pl. Com.* 29. *b. Semb. acc. Reg. Jud.* 6.

So, a Gift to *A. and his Heirs, habendum to him and his Heirs, and if the Donee dies without Iſſue*, that the Land ſhall revert. 1 *Rol.* 838. *l.* 45.

Or, with Warranty, to *A. and his Heirs, and if he dies without Heir of his Body*, Remainder to *B. R.* 1 *Rol.* 839. *l.* 5.

Or, to *A. and his Heirs, and if he dies without Iſſue of his Body*, to *B. R.* 5 *Mod.* 268. *R.* 3 *Leo.* 5.

So the Words, *of his Body*, are not neceſſary, if there are Words tantamount: As, if a Gift be to *A. & hæredibus de carne ſuâ. Co. L.* 20. *b.*

Or, to *A. & hæredibus de ſe. Co. L.* 20. *b.*

Or, to *A. and the Heirs Male of the ſaid A.** *R.* 7 *Co.* 41.

Or, *the Heirs which A. de primâ Uxore procrearet. Co. L.* 20. *b.* 1 *Rol.* 837. *l.* 20.

*Heirs which ſibi contigerit. Co. L.* 20. *b.*

*The Heirs by A. procreatis* or *procreandis. Co. L.* 20. *b.*

And *procreandis* extends to Iſſues born before, as well as *procreatis* to Iſſues afterwards. *Co. L.* 20. *b.*

* [*Lawfully begotten.*]

To

To *A. for Life, and afterwards to the Heirs of A. procreatis* or *procreandis, and for want of ſuch Iſſue* to *B.* ſhall be an Eſtate Tail to *A. R.* 1 *Ch. R.* 213.

So a Gift to *A. and his Heirs, and if he dies without Heir of his Body*, that it revert to the Donor. *Co. L.* 21. *a.*

So a Feoffment to the Uſe of *B. and his Heirs in perpetuum, and in Default of Iſſue of the Body of B.* to the right Heirs of the Feoffor; *B.* has only an Eſtate Tail: for the Uſe ſhall be conſtrued according to the Intent. *R. Carth.* 343. 5 *Mod.* 267.

So ſometimes a Limitation to the Heirs of the Body of another, makes an Eſtate Tail: As, to *A. and the Heirs of the Body of his Father*, tho' his Father be dead. *Lit. S.* 30. *Co. L.* 27. *a.*

To the Grandfather, *and the Heirs of the Body of his Son. Co. L.* 20. *b.*

But, to the Son *and his Heirs of the Body of his Father*, or *Grandfather*, is repugnant, and void. *Co. L.* 27. *a.*

So a Gift to *A. and the Heirs of her Body by B. her Huſband (then dead) begotten*; tho' *A.* has it only for Life, yet there ſhall be an Eſtate Tail to the Heirs of *A.* by *B.* and it ſhall veſt in the Son of *A.* by *B.* and upon his Death without Iſſue, ſhall deſcend to his Siſter, as Heir of the Body of *A.* by *B. Co. L.* 26. *b.*

So an Eſtate for Life, Remainder *to the Heirs Male of the Body of his Grandfather*; the Heirs Male of the Grandfather all take an Eſtate by way of Remainder in Tail. *Per* 3 *J.* 4 *cont. Dy.* 156. *Dub. Cro. El.* 109. 2 *Leo.* 25, 27. *Acc. Co. L.* 220. *a. R. acc. Cro. Car.* 24. *Acc.* 1 *Mod.* 226, 237. 2 *Mod.* 207.

But if *A.* has a Son and a Daughter, a Gift to the Daughter *and the Heirs Female of the Body of her Father*, is void: becauſe ſhe is not Heir. *Co. L.* 26. *Vide Poſt*, (B. 8.)

So, by Deviſe, an Eſtate Tail ſhall be created by Words, which are not ſufficient for it in a Grant. *Vide Deviſe*, (N. 5, 6.)

Or, by Act of Parliament. *Jon.* 105.

## (B. 4.) Tail General, What ſhall be.

Tenant in Tail is in 2 Manners: in Tail General, or Special. *Co. L.* 19. *b.*

Tenant in Tail General is, where Lands are given to a Man *and the Heirs of his Body*, generally, without Reſtriction. *Lit. S.* 14.

Or, to a Man *and the Heirs Male*, or *Female of his Body. Co. L.* 25. *b.*

## (B. 5.) Tail Special, What ſhall be.

Tenant in Tail Special is, where the Gift is ſpecially reſtrained to ſome Heirs of his Body, and does not go to all the Heirs of his Body in general: As, if Land be given to Huſband and Wife, *and the Heirs of their two Bodies. Lit. S.* 16.

Or, to *A.* and *B.* (not married) *and to the Heirs of their two Bodies*, is a good Tail, for the Poſſibility of a Marriage between them. *Co. L.* 20. *b.* 25. *b.*

Or, to the Huſband of *A.* and the Wife of *B. and the Heirs of their two Bodies. Co. L.* 20. *b.* 1 *Co.* 120. *Co. L.* 25. *b.*

So, if a Gift be to *A. and the Heirs Male of his Body*, it is a Special Tail. *Lit. S.* 21.

Or, to *A. and the Heirs Female of his Body. Lit. S.* 22.

Or, to *Huſband and Wife and the Heirs Males of their Bodies. Lit. S.* 25.

To

To *A. and his Heirs upon ſuch a Wife begotten. Lit. S.* 29. *R.* 1 *And.* 310.

If a Gift be to Huſband and Wife with a Limitation *to the Heirs of their Bodies equally*, both have an Eſtate Tail. *Co. L.* 26. *a.*

Or, to Huſband and Wife, *and the Heirs which the Huſband ſhall beget upon the Body of his Wife. Lit. S.* 28. *Lane* 17.

Or, *Heirs upon the Body of the Wife by the Huſband begotten. R. Yel.* 131. *Vide infra.*

Or, *to the Heirs of the Body of the Wife and of the Body of the Huſband. R. Yel.* 131.

But if it be to Huſband and Wife, *and the Heirs of the Body of the Huſband*; he only has a Tail, and the Wife for Life. *Lit. S.* 26, 27.

Or, to Huſband and Wife, *and the Heirs of the Body of the Wife*; ſhe has an Eſtate Tail, and the Huſband for Life. *R.* 2 *Cro.* 475.

Or, *to the Heirs of the Body of the Wife by the Huſband begotten. Lit. S.* 28. *Dub. Lane* 17. *Vide ſupra.*

Or, *the Heirs of the Body of the Wife by the Huſband and B. begotten. Yel.* 131.

Or, to Huſband and Wife for Life, and afterwards *to the Heirs of the Body of the Wife by the Huſband begotten. R. Yel.* 131. *Vide ſupra.*

Or, *to the Heirs of the Body of the Huſband upon the Body of the Wife begotten*; the Huſband only has the Tail. *R. Hob.* 84.

So, if it be, *to the Heirs of the Huſband de Corpore ſuo ſuper Corpus of the Wife. Hob.* 84.

So a Gift to Huſband and Wife *and the Heirs of the Body of the Survivor*, gives a Tail only to the Survivor. *Co. L.* 26. *a.*

A Gift to 2 Huſbands and their Wives *and the Heirs of their Bodies*, makes a joint Eſtate for Life with ſeveral Inheritances, *viz.* of a Moiety to one Huſband and Wife and their Iſſue, the other Moiety to the other Huſband and Wife and their Iſſue. *Co. L.* 25. *b.*

So a Gift to *B.* and 2 Women, or *vice verſâ*, makes a joint Eſtate for Life, with ſeveral Inheritances to each. *Co. L.* 25. *b.*

## (B. 6.) Gift in *Frankmarriage.*

A Gift in *Frankmarriage* is, when a Man gives Lands or Tenements to a Man with his Daughter, or other of his Blood, in *Frankmarriage. Lit. S.* 17.

So, if a Gift be to *A. habendum in liberum Maritagium cum Filiâ ſuâ*; ſo that the Woman is only named after the *Habendum. Co. L.* 21. *a.*

So, if a Gift be to *A. in liberum Maritagium B. Filiæ*, without ſaying, *cum Filiâ. R. Ow.* 26. *Godb.* 18.

So a Gift to a Woman with a Son in *Frankmarriage* is good. *Co. L.* 21. *b.*

So a Gift after Marriage, as well as before. *Co. L.* 21. *b. R. Godb.* 19.

And a Gift to a Man with a Widow, as well as with a Virgin. *Co. L.* 21. *b.*

So the Gift ſhall be good, tho' a Remainder be limited to a Stranger in Tail, if the Reverſion be to the Donor. *Godb.* 20.

Every Inheritance which lies in Tenure may be given in *Frankmarriage*: As, Lands and Tenements, in Reverſion, as well as in Poſſeſſion. *Co. L.* 21. *b.*

A Rent-ſervice, Charge, or Seck. *Co. L.* 21. *b.*

If a Gift in *Frankmarriage* takes Effect, it ſhall not be deſtroyed, tho' the Donor afterwards aſſigns the Reverſion. *Godb.* 20.

By a Gift in *Frankmarriage*, the Donees have an Eſtate in Special-Tail to them and the Heirs of their Bodies begotten, without other Words, *Lit. S.* 17. *Godb.* 19.

And the Donees hold freely of the Donor till after the 4th Degree. *Godb.* 19. *Lit. S.* 19. *Vide Co. L.* 21. *b.*

And therefore, if a Rent be reſerved upon the Gift, it does not take Effect till the 4th Degree paſt. *Co. L.* 21. *b.* 1 *Rol.* 840. *l.* 45.

But a Gift without the Word, *Frankmarriage*, is not ſupplied by any Words tantamount: As, if it be given *in Connubio ab omni Servitio ſoluto*. *Co. L.* 21. *b.*

So, if, *liberum*, only be omitted. *Per Dy. Godb.* 19.

So a Gift in *Frankmarriage* is not good, if it be not with ſome of the Blood of the Donor. *Co. L.* 21. *b.* *Godb.* 19.

Or, if it be of a Thing which lies not in Tenure. *Co. L.* 21. *b.*

Or, if the Tenure be not of the Donor: and therefore, a Gift in *Frankmarriage*, the Reverſion to a Stranger, paſſes only an Eſtate for Life. *Co. L.* 21. *b.* *Godb.* 20.

So, if the Reverſion was limited to themſelves. *Co. L.* 21. *b.* 1 *Rol.* 840. *l.* 50.

So, before the *St.* 27 *H.* 8. *Ceſtuy que Uſe* could not make a Gift in *Frankmarriage*; becauſe the Reverſion was in the Feoffees. *Co. L.* 21. *b.*

So a Gift in *Frankmarriage* cannot be by Deviſe: for there is no Tenure created. *Co. L.* 21. *b.*

## (B. 7.) Iſſue in Tail; How he takes.

The Iſſue in Tail does not take by Deſcent only; but by the *St. de Donis* as well as by Deſcent, and is in *per formam Doni*.

(B. 8.) He takes *per formam Doni*, tho' he be not Heir.

So, if Land be given to *B. and the Heirs Female of his Body*, who has a Son and a Daughter, the Daughter ſhall inherit *per formam Doni*, tho' the Son be Heir. *Co. L.* 24. *b.*

But, regularly, ſuch Special Heir ſhall not take by Purchaſe, where he is not alſo Heir General: As, if there be a Leaſe for Life, Remainder *to the Heirs Female of the Body of B.* who has Iſſue a Son and a Daughter, the Daughter ſhall not take: for ſhe ought to be Heir, as well as Heir Female. *Co. L.* 24. *b.* *Hob.* 31.

So, if a Remainder be to *the Heirs Male of the Body of B.* who has 2 Sons, and the eldeſt has Iſſue a Daughter, and dies; the youngeſt Son cannot have the Remainder. 1 *Co.* 95. *b.* 103.

So a Deviſe in Tail, Remainder *to the right Heirs Males of him and of his Name*; his Brother ſhall not take, if there be a Daughter who was Heir General. *R. Hob.* 31. 2 *Rol.* 416. *l.* 30.

Yet ſometimes, where there is a particular Deſcription, or Deſignation, of the Perſon to whom the Remainder is limited, ſuch ſpecial Heir ſhall take, tho' there be another Heir General: As, where a Man takes Notice by his Will, that he has Daughters, yet deviſes Land to his Heir Male; the Son of his Brother ſhall take. *Cited* 1 *Vent.* 381.

So a Deviſe to his eldeſt Son and the Heirs Male of his Body, Remainder *to the Heir Male of the Deviſor, and his Heirs of his Body*; a Son of the Deviſor by a 2d Venter ſhall take the Remainder. *R. Cro. Car.* 24.

A Deviſe *to the Heir Male of the Body of his Great Grandfather*; the Perſon who is his Iſſue Male ſhall take, tho' there be a Daughter who is Heir General. *Per Cowper*, 11 *Feb.* 3 *Geo. in Chanc. inter Newcomen and Berkham.* But this was in Execution of a Truſt. *Eq. Ca.* 117. (*Vide* 2 *Ver.* 709.)

So

So, where a Purchaſe is by Deed: As, if *B.* covenants to ſtand ſeiſed to the Uſe of *his Heirs Male upon the Body of A. his Wife begotten*; a Son by *A.* his 2d Wife ſhall take the Remainder, tho' there be an Heir by the firſt Venter. *R. per Hale and Wyld, 1 Vent.* 381, *Pibus and Mitford.*

(B. 9.) Muſt convey his Deſcent wholly thro' Males, *&c.*

But an Eſtate Tail to a Man and the Heirs Male of his Body ſhall deſcend to him, who can convey his Deſcent wholly through Heirs Male: As, if he has Iſſue a Daughter, who has Iſſue a Son; the Son ſhall not inherit by Force of the Entail. *Lit. S.* 24.

So, if Tenant in Tail to him and the Heirs Female of his Body, has Iſſue a Son who has Iſſue a Daughter; the Daughter ſhall not inherit. *Co. L.* 25. *a.* 2 *Ver.* 409.

So, if *B.* has an Eſtate to him and the Heirs Male of his Body, Remainder to him and the Heirs Female of his Body, and he has Iſſue a Son, who has Iſſue a Daughter, who has Iſſue a Son; the Son of the Daughter ſhall not inherit to either Entail. *Co. L.* 25. *b.*

So, if an Eſtate Tail be by Deviſe; for that does not alter the Nature of the Deſcent. *Co. L.* 25. *a.*

## (B. 10.) A Reverſion.

(B. 10.) What ſhall be.

In every Gift in Tail, the Reverſion of the Fee Simple, without ſaying more, is in the Donor. *Lit. S.* 19.

*Vide Copyhold,* (C. 12.)

The Reverſion is the Reſidue of the Eſtate continuing in him, who made the Particular Eſtate. *Co. L.* 22. *b.*

Upon a Gift in Tail, by Operation of the *St. W.* 2. 1. *de Donis*, the Poſſibility of *Reverter* is turned to a Reverſion in the Donor. *Co. L.* 22. *a.* 2 *Inſt.* 335.

So, upon a Leaſe for Life or Years, the Leſſor has the Reverſion continuing in him. *Co. L.* 22. *b.*

So, upon an Extent by Statute-Merchant, Staple, Recognizance, or *Elegit*, a Reverſion is left in the Conuſor. *Co. L.* 22. *b. Vide Statute Staple,* (C.)

So, ſince the *St.* 27 *H.* 8. 10. If a Man makes a Feoffment to the Uſe of *B.* for Life or in Tail, and afterwards to the right Heirs of the Feoffor; the Reverſion is in him: for the Uſe was continuing in him, and the Statute executes the Poſſeſſion to the Uſe. *Co. L.* 22. *b. Vide Diſcent,* (A.)

Or, to the Uſe of himſelf for Life or Years, and afterwards to *B.* for Life, and afterwards to his right Heirs; the Feoffor has the Reverſion in him. *Co. L.* 22. *b. R.* 3 *Lev.* 406. *R. Sal.* 591.

So, if Huſband and Wife levy a Fine to the Uſe of the Huſband for Life, Remainder to *A.* for Life, Remainder to the right Heirs of the Huſband; the Huſband and *A.* die in the Life of the Wife; ſhe ſhall have it, and not the Heir of the Huſband: for it was a Reverſion, and not a Remainder. *Cont. per* 3 *J. but Ch. J. Dy. and Ch. B. acc. Dy.* 237. *b.*

But if a Man leaſes Land for Years, there is not any Reverſion till the Leſſee enters, or the Leſſor waives the Poſſeſſion. *Co. L.* 46. *b.*

So, if a Feoffment be to the Uſe of the Feoffor in Tail, and afterwards to the Feoffee and his Heirs; the Feoffee has not a Reverſion, but a Remainder. *Co. L.* 22. *b.*

So, if a Grant be of a Prebend, Donative, Hoſpital, *&c.* no Reverſion remains: for the Prebendary, *&c.* has the whole Eſtate, tho' upon his Death it remains in the Patron. *R. Ca. Ch.* 214.

(B. 11.) Of what Account.

A Reverſion upon an Eſtate Tail is of no great Account, for it may be docked by a Common Recovery.

If

(B. 12.) By what Words it paſſes.

If a Man grants *the Reverſion of his Land*, that is ſufficient to paſs his Reverſion.

So, if he grants *the Land itſelf*, the Reverſion paſſes: for when he grants the Land, it cannot be intended that he would not grant his Reverſion. *R.* 10 *Co.* 107. *a.* *D. Vau.* 83. *Pl. Com.* 433. *b.*

By a Grant of *a Reverſion*, Fealty paſſes as incident; for it cannot be ſevered. *Co. L.* 143. *a.*

So a Rent paſſes; if it be not excepted, for it may be ſevered. *Co. L.* 143. *a.* *Vide Rent*, (C. 5.)

But if *A.* reciting a Leaſe by his Father (which is void as to him) grants his Reverſion of the ſame Land after the End of the former Leaſe to another for Years, his Grant is void; for he had not the Reverſion. *R. Jon.* 355.

So, by the Grant of *a Reverſion*, Land in Poſſeſſion does not paſs. *R.* 10 *Co.* 107. *b.* *R. Cro. Car.* 400. *D. Vau.* 83.

Nor, by the Grant of *a Reverſion and other the Premiſſes*; for that cannot be underſtood of the ſame Premiſſes, of which the Reverſion was mentioned before. *R. Cro. Car.* 400.

Nor, by the Grant of *a Reverſion, habendum the Land*; for the *Habendum* does not enlarge it. *Pl. Com.* 150. *Cro. Car.* 400.

## (B. 13.) A Remainder.

(B. 13.) What ſhall be a good one. *Vide Copyhold*, (C. 11.)

So, by Conſtruction upon the *St. W.* 2. 1. *de Donis*, a Remainder may be limited upon an Eſtate Tail.

A Remainder is the Remnant of an Eſtate in Land, depending upon a Particular Eſtate, and created with it. *Co. L.* 49. *a.* 143. *a.*

As, if a Man makes a Gift in Tail, Remainder to another in Tail, or in Fee.

Or makes a Leaſe for Life, or Years, Remainder to another for Life, in Tail, or in Fee.

And ſuch Remainder ſhall be good without Deed; for it paſſes by the Livery made for the Particular Eſtate; for the Remainder and the Particular Eſtate make but one Eſtate to many Intents. *Co. L.* 143. *a.*

So he may give an Eſtate to *A.* for Life, Remainder to *B.* in Tail, and if *B.* dies without Iſſue, to another for Years, *&c.* this Eſtate for Years ſhall be good after the Death without Iſſue. *R.* 1 *Sid.* 102.

So there may be a Remainder for Years after a prior Term for Years. *Ray.* 142.

So there may be a Remainder of a Rent created *de novo*. *Cont. per Montagu, Pl. Com.* 35. *a.* *Adm. acc. Dy.* 311, *a.* 4 *Mod.* 280. *Mod. Ca.* 112. *R.* 1 *Sid.* 285. *R. Sal.* 577. *R. Mo.* 30.

And it is ſufficient, that the Remainder veſts during the Particular Eſtate, or *eo inſtante* that the Particular Eſtate determines: As, if there be a Leaſe for Life, Remainder to the right Heirs of *B.* or the firſt Son of *B. &c.* if *B.* dies or has a Son in the Life of the Leſſee, the Remainder will be good. *Pl. Com.* 29.

So, if a Rent be granted to *B.* for the Life of *C.* Remainder to the right Heirs of *C.* it ſhall be good; for it veſts *eo inſtante* that the Eſtate of *B.* determines. *Co. L.* 298. *a.*

So, if an Eſtate be granted to *A.* for Life, and if ſuch a Condition be performed, that *B.* ſhall have it; if the Condition be performed in the Life of *A.* the Remainder will be good. *Pl. Com.* 27, 29.

So, if a Remainder be limited to a Perſon incapable, as a Monk, *&c.* if he becomes capable before the Particular Eſtate determines, it is ſufficient. *Pl. Com.* 27. *b.* *

* [*Note*, the Book is *Cont.*]

So

So if the Particular Eſtate be to a *Non compos*, who makes a Surrender; for his Surrender is void. *R. Sal.* 577. (*Vide Comyns's Rep.* 45.)

So it is ſufficient, if the Remainder veſts during the Continuance of the Particular Eſtate, tho' there be an Alteration of the Eſtate, if it be not totally merged or deſtroyed: As, if Leſſee for Life grants over his Eſtate before the Remainder happens; for the Eſtate of the Grantee ſupports the Contingent Remainder. *Per Windh. Ray.* 30. *Pol.* 90.

So, if Leſſee for Life, Remainder to *A.* for Life, Remainder to the firſt Iſſue of *A.* Remainder to *B.* in Tail, leaſes for Years to *A.* who joins with *B.* in a Fine and Feoffment; the Contingent Remainder to the firſt Iſſue ſtands good: for the Eſtate of the Leſſee for Life ſupports it. 2 *Rol.* 794. *l.* 5.

So, if a Particular Eſtate be to 2 for Life, and one Joint-tenant releaſes to the other. *R. per* 3 *J. Dolb. cont. Ray.* 413. 1 *Vent.* 345. 2 *Jon.* 136.

Or, to *A.* for Life, Remainder to his firſt Son in Tail, Remainder to *A.* in Fee; tho' the Fee be executed, the Remainder is not deſtroyed. *Pol.* 90.

So, if Leſſee for Life, *&c.* be diſſeiſed: for a preſent Right of Entry is ſufficient to ſupport a Contingent Remainder. *D.* 1 *Vent.* 189. *Per Holt, M.* 9 *W.* 3. *inter Thompſon and Leach. Salk.* 577. 1 *Co.* 66. *b.* 135. *b. Semb. Pol.* 98. (*Vide Comyns's Rep.* 45.)

So, if Tenant for Life, Remainder to his Wife for Life, Remainder to *B.* Remainder to the eldeſt Son of *B.* makes a Feoffment; the Remainder to the eldeſt Son is not deſtroyed: for by the Feoffment the Eſtate of the Huſband and Wife ſhall be loſt, by which *B.* has a preſent Right of Entry. *R.* 2 *Rol.* 796. *l.* 35. 794. *l.* 5. 797. *l.* 5. *Semb. Pol.* 376, 381.

And tho' the Leſſee, who has a preſent Right, does not enter during his Life, yet the firſt Feoffees may enter after his Death to revive the Contingent Eſtate. *R.* 2 *Rol.* 797. *l.* 20. Or rather the Iſſue himſelf. *Pol.* 395.

Otherwiſe, if the Feoffees, after the Contingency happened, releaſe their Right, or by Feoffment or otherwiſe bar their Entry. *R.* 2 *Rol.* 797. *l.* 40. *Semb. cont. Pol.* 383.

So, if there be Tenant for Life, Remainder to his 1ſt Son in Tail, Remainder to *B.* for Life, Remainder to his 1ſt Son in Tail, *&c.* and if *B.* grants by Fine to the Tenant for Life, who has a Son born, and then makes a Feoffment; for the Right of the Son born is ſufficient. *R.* 1 *Vent.* 189. 2 *Lev.* 35.

So it is ſufficient, tho' the Particular Eſtate be once merged or deſtroyed, if it be revived before the Remainder happens: As, if Leſſee for Life, upon which a Contingent Remainder is limited, makes a Feoffment upon Condition, and enters for the Condition broken, before the Contingency happens. *Per Holt, M.* 9 *W.* 3. *inter Thompſon and Leach. Semb. cont. per Hale,* 2 *Sand.* 387. (*Vide Salk.* 577. *Comyns's Rep.* 45.)

If Leſſee for Life, Remainder to his Wife for Life, Remainder to another upon a Contingency, makes a Feoffment, and dies, and his Wife enters before the Contingency happens: for this brings back the Eſtate of the Wife for Life, and the Contingent Uſe alſo. *Semb.* 2 *Rol.* 796. *l.* 50. *Acc.* 2 *Rol.* 797. *l.* 15, 30.

So, if the Leſſee for Life be attainted for Treaſon, whereby his Eſtate is veſted in the King; the firſt Son born before or after the Attainder ſhall have it: for the Eſtate of the Wife was ſufficient to ſupport the Contingent Remainder to the Son. *R. Sal.* 576.

So, if *B.* after a Son born, with him in Fee, conveys to *A.* who makes a Feoffment, and then *B.* has another Son, and the firſt Son dies; the Right of Entry in the firſt Son is ſufficient. *R.* 2 *Lev.* 35.

So it is ſufficient if the Remainder veſts, tho' the Particular Eſtate be afterwards defeated: As, if the Leſſor diſſeiſes the Leſſee for Life, and after-

wards makes a Feoffment to the Uſe of *B.* during the Life of the Leſſee, Remainder to *A.* and the Leſſee enters upon *B.* whereby his Eſtate is defeated; yet the Remainder to *A.* ſtands good. *Co. L.* 298. *a.*

So, if a Leaſe be to an Infant for Life, Remainder to *B.* and the Infant at full Age diſagrees; yet the Remainder is good. *Co. L.* 298. *a.* *D.* 1 *Sid.* 360.

So, where a Remainder is limited to a Perſon certain and known, tho' it takes Effect only upon a Contingency, yet it ſtands good, tho' the Particular Eſtate be deſtroyed: As, a Deviſe to an eldeſt Son for Life, and if he does not pay Annuities, *&c.* to the youngeſt Son; if the eldeſt Son makes a Feoffment, and afterwards fails in Payment of the Annuities, *&c.* the youngeſt Son may enter. *R.* 2 *Rol.* 793. *l.* 45. for it is not like an Uſe in Remainder. *Ibid.*

A Deviſe to *A.* for Life, Remainder to the eldeſt Son of *A.* and the Heirs of his Body; if *A.* dies, his Wife *privement enſeint* with a Son, the Son ſhall have it after his Birth. *R. cont. but the Judgment was reverſed in Parliament.* 4 *Mod.* 285.

(B. 14) What not. If it be not ſupported by a Particular Eſtate.

But a Remainder cannot be created without a Particular Eſtate: As, if an Heir endows his Mother, Remainder to *A.* in Fee. *Pl. Com.* 25. *b.*

Tho' it be by way of an Uſe: As, if Huſband and Wife, ſeiſed in Right of the Wife, levy a Fine, and declare the Uſes to the Heirs of the Body of the Huſband upon his Wife to be begotten. *R.* 4 *Mod.* 155. *Ca. Parl.* 105. *Skin.* 351. *Vide Uſes*, (B. 2.—K. 7.)

So, if a Particular Eſtate is void in its Creation, the Remainder limited upon it is alſo void: As, if a Lord grants his Seigniory to the Terre-tenant for Life, Remainder over; the Remainder is void: for the Seigniory granted to the Terre-tenant was extinct. *Dy.* 140. *b.*

So, if a Rent-charge be granted to a Terre-tenant for Years, Remainder over; the Remainder is void: for, by the Grant to the Terre-tenant, the Rent is ſuſpended at the Commencement. 2 *Rol.* 415. *l.* 20.

If a Leſſor confirms the Eſtate of the Leſſee for Life, Remainder in Fee. *Pl. Com.* 25. *b.*

Or diſſeiſes him, and afterwards makes a new Leaſe to him for Life, Remainder in Fee: for the Leſſee is remitted. *Pl. Com.* 25. *b.*

So a Grant to a Perſon incapable, as to a Monk, *&c.* Remainder over, is void. 2 *Rol.* 415. *l.* 25. *Pl. Com.* 35. *a.*

Or, to a Perſon not *in rerum Naturâ*, for Life. 2 *Rol.* 415. *l.* 27.

Otherwiſe, if a Deviſe be to a Monk, a Perſon not *in rerum Naturâ*, *&c.* for Life: for the Remainder over ſhall be good. 2 *Rol.* 415. *l.* 30. *Vide Deviſe*, (N. 19.)

So, if the Particular Eſtate be only for Years, Remainder to the right Heirs of *B.* it is void: for a Freehold cannot be in Abeyance. *R.* 1 *Co.* 130. *a.* 134. *b.* 135. *a.* *Mo.* 720. 3 *Co.* 20. *Ray.* 83. *Popb.* 4.

So a Deviſe to *A.* for 50 Years, Remainder to the Heirs Males of the Body of *A.* will be a void Remainder. *R.* 4 *Mod.* 259. 1 *Sal.* 226. *Skin.* 408.

Or, to *A.* for 50 Years if he ſo long live, Remainder to his firſt and other Sons, Remainder to *B.* *R. Mo.* 488. *R. Sal.* 229. *Semb.* 2 *Ver.* 131, 372.

Or, to *B.* for Years, Remainder to the right Heirs of *B.* *Per* 2 *J.* 4 *Leo.* 21.

Yet a Remainder for Years, after a Term for Years, will be good; for it may be in Abeyance. *Ray.* 142.

So

So a Deviſe for 15 Years, Remainder to the firſt Son of *B.* ſhall be good: for the Law aids him *qui eſt inops Conſilii*. *Ray.* 83. *Vide Deviſe*, (N. 16.)

(B. 15.) Or the Particular Eſtate be deſtroyed before the Remainder be veſted.

So, if the Particular Eſtate be merged or deſtroyed before the Remainder veſts, it never can veſt: As, if Tenant for Life, Remainder to the right Heirs of *B.* or upon another Contingency, Remainder to *D.* in Fee; if *D.* dies, and his Eſtate deſcends to the Tenant for Life, whereby his Eſtate is merged before the Contingency happens; the Remainder never veſts. 1 *Co.* 135. *b.*

So, in any Caſe, where the Reverſion deſcends upon the Particular Eſtate, and drowns it before the Contingency happens. *R. by all the Judges except Flemyng*. 2 *Cro.* 260. 1 *Bul.* 61. *Per Holt*, 2 *Sand.* 386. *Arg*ᵗ.

So, tho' the Reverſion deſcends upon a Particular Eſtate, with a Contingent Remainder, created by Deviſe; except when it may take Effect as an executory Deviſe. *R.* 2 *Cro.* 260. *R.* 2 *Lev.* 202.

So, if the Particular Eſtate be merged in the Reverſion by the Surrender of the Tenant.

Or determined by the Death of the Tenant. *R.* 1 *Sal.* 238.

Or, by the Death of Tenant in Tail without Iſſue. 2 *Leo.* 70.

Tho' the Eſtate was created by Deviſe. *R.* 2 *Leo.* 70. *Mo.* 371.

So, if the Particular Eſtate be deſtroyed before the Contingency happens, by the Act or Wrong of the Tenant: As, if Tenant for Life, Remainder to his right Heir in Tail, Remainder in Fee to Tenant for Life, makes a Feoffment, or levies a Fine, whereby his Eſtate for Life is gone. *R.* 1 *Co.* 66. *b.* *R. Cro. El.* 630. 1 *Co.* 135. *b.* *R. Mo.* 545.

So, if Tenant for Life be attainted for Treaſon, or Felony. *R. Mo.* 815. *Semb. Sal.* 576.

So, if there be Tenant for Life, Remainder upon a Contingency, Remainder in Tail, and Tenant for Life joins with the Remainder-man in Tail in a Fine; tho' each paſſes only that which he lawfully may, the Remainder is loſt. *Per Hale*, 2 *Sand.* 386.

So, if Tenant in Tail, Remainder to the right Heirs of *B.* makes a Feoffment in the Life of *B.* the Remainder never can veſt. 1 *Co.* 135. *b.*

So, tho' the Act which deſtroys the Particular Eſtate be voidable; As, if a *Feme Covert* be Tenant for Life, and the Reverſion is granted to her and her Huſband; tho' ſhe may afterwards waive it, the Contingent Remainder depending thereon is gone. *R.* 2 *Sand.* 387. 2 *Lev.* 39.

So, if Tenant for Life be *Non compos*, and makes a Surrender to him in Reverſion: if his Surrender is not void, but only voidable. *R. M.* 9 *W.* 3. *inter Thompſon and Leach. Sal.* 576. (*Vide Comyns's Rep.* 46.)

So, if an Eſtate be to Huſband and Wife for Life, Remainder to the Heirs of the Survivor, and the Huſband alone makes a Feoffment, and dies; the Remainder is gone, tho' the Wife might avoid the Feoffment *eo inſtante* that the Contingency happens, *R. Cro. Car.* 102. *Vide* 2 *Rol.* 796. *l.* 45. *But Holt ſaid that it was a nice Caſe. M.* 9 *W.* 3. *inter Thompſon and Leach.* (*Vide Comyns's Rep.* 46.)

So, if Tenant for Life makes a Feoffment upon Condition. *Per Holt*, *M.* 9 *W.* 3. (*Vide Comyns's Rep.* 46.)

Tho' the Condition be broken before the Contingent Remainder happens: for a bare Title of Entry is not, tho' a preſent Right of Entry is ſufficient to ſupport a Contingent Remainder. *Per Holt*, *M.* 9 *W.* 3. (*Vide Comyns's Rep.* 46.)

Tho' the Particular Eſtate be revived after the Remainder firſt attached: As, by Entry for a Condition broken, &c. *Per Hale*, 2 *Sand.* 387. *Per Holt*, *M.* 9 *W.* 3. *Sal.* 577. (*Vide Comyns's Rep.* 46.)

So,

So, if a Remainder to a Perſon *in Eſſe* be Contingent, becauſe it commences after a contingent Fee to another not *in Eſſe*; if by Fine, *&c.* the Particular Eſtate be deſtroyed before the other comes *in Eſſe*, the Remainder *in Eſſe* cannot take Effect. *R.* 1 *Sal.* 224.

So a future Right of Entry is not ſufficient to ſupport a Contingent Remainder, *Dub.* 1 *Vent.* 189. *Per Holt acc. M.* 9 *W.* 3. *inter Thompſon and Leach.* *(Vide Comyns's Rep.* 46. *Sal.* 577.)

As, if an Eſtate be limited to *A.* for Life, and afterwards to his Wife for Life, Remainder to the firſt Son of *B. &c.* If *A.* makes a Feoffment before *B.* has Iſſue, the Contingent Remainder is deſtroyed: for the Feoffment by *A.* paſſes his Eſtate and the Remainder to the Wife during the Coverture; and ſo no Right of Entry was in him during the Coverture. *Semb.* 2 *Rol.* 796. *l.* 45.

If *A.* be diſſeiſed, and a Deſcent caſt, and 5 Years paſſed, by which the Entry is tolled. *Sal.* 577.

So, if the Freehold be gone, or defeated before the Remainder upon it veſts, tho' a Particular Eſtate for Years remains: As, if a Feoffment be to the Uſe of *A.* for Years, Remainder to *B.* in Tail, Remainder to the right Heirs of *A.* If *B.* dies without Iſſue in the Life of *A.* the Remainder to his right Heirs is void. *R.* 2 *Rol.* 791. *l.* 50.

So, if a Particular Eſtate by Deviſe, *&c.* be deſtroyed by the wrongful Act of the Tenant before any Remainder veſts, the wrongful Eſtate never can be made void but by the right Heirs of the Deviſor. 1 *Sal.* 224, 5.

(B. 16.) What Remainder ſhall be Contingent. *Vide Deviſe,* (N. 16, 17.)

If a Remainder be limited to commence upon a Contingency, which perhaps will not be before the Particular Eſtate determines, the Remainder will be Contingent, and does not veſt immediately: As, if a Leaſe be to *A.* for Life, Remainder to the right Heirs of *B.* for perhaps *A.* may die before *B.* and then the Remainder will never take Effect. 3 *Co.* 20. *a. Pol.* 56.

A Leaſe to *A.* till his full Age, Remainder to *B.* It will be a Contingent Remainder. *R.* 3 *Co.* 20. *a.*

A Leaſe to *A.* for Life, Remainder to *B.* for Life, and if *B.* dies before *A.* Remainder to *C.* 3 *Co.* 20. *a.*

A Feoffment to *A.* to the Uſe of *B.* for the Life of *C.* and if *B.* and *C.* die, Remainder to *D.* The Remainder is Contingent. *Lane* 22.

A Deviſe to *A.* for Life, and if he ſhall have Iſſue Male, to ſuch Iſſue; if he ſhall not have them to *B.* *Semb.* 3 *Lev.* 434. *R.* 1 *Sid.* 47. *Ray.* 28.

A Leaſe to *A.* for Life, and if *B.* pays ſo much, Remainder to the right Heirs of *B.* For perhaps *B.* will not pay during the Life of *A.* *Pol.* 57.

Or, after the Death of *A.* and *C.* to *B.* For perhaps *A.* may die before *C.* and the Remainder cannot commence till the Death of both. *R. Pol.* 57.

A Leaſe for 40 Years if *A.* ſo long lives, Remainder, after the Death of *A.* to another, is Contingent. *Ray.* 144. *Pol.* 67. 2 *Ver.* 131.

To Huſband and Wife for Life, and afterwards to the Heirs of the Survivor. *Co. L.* 26. *a.*

So, if a Remainder commences upon an Act, which determines the Particular Eſtate: As, if a Leaſe be to *A.* till his Return from *Rome*, and after his Return, to *B.* The Remainder to *B.* is Contingent. *R.* 3 *Co.* 20. *a.*

So, if a Remainder commences after a contingent Fee, it cannot be Veſted, but Contingent: As, a Deviſe to *A.* for Life, and if he has Iſſue Male, to him in Fee; if he has not, to *B.* in Fee: the Remainder to *B.* is Contingent. *R.* 1 *Sal.* 224.

But there cannot be a Remainder for Years in Contingency: for every Leaſe for Years enures by Way of Contract. *Ray.* 151.

But if a Remainder be to commence upon a Thing caſual, but certain in the Event, tho' it be expreſſed that it ſhall not commence till the Caſualty happens, the Remainder ſhall be Veſted, and is not Contingent: As, if a Leaſe be for Years if *B.* ſo long lives, Remainder, when *B.* dies, to *D.* For it is certain that *B.* muſt die, and the Words, *when B. dies*, denote the Time when the Remainder ſhall take Effect in Poſſeſſion. *Pl. Com.* 33. *a.*

(B. 17.) What ſhall be Veſted. *Vide Deviſe*, (N. 18.)

So, a Leaſe for Life or Years, Remainder after the Death of the Leſſee, or End of the Term, to *B.* 3 *Co.* 21. *a. Cro. El.* 450, 585.

A Gift to *A.* and the Heirs of his Body, and if it happens that he dies without Iſſue, Remainder to *B*; the Remainder veſts immediately. *Hob.* 30, 31.

A Deviſe to *A.* in Tail, and after his Death, without Iſſue, to *B.* and if *B.* dies without Iſſue, *A.* not being alive, to *C.* in Fee; the Remainder to *C.* is Veſted: for the Words, *A. not being alive*, import nothing but what was implied. *R.* 1 *Sal.* 233.

So, if a Fine or Feoffment be to *A.* till he comes back to *England*, and attains his full Age, or dies, and after his Return and full Age, or Death, Remainder to *B*; the Remainder veſts immediately: for it is of Neceſſity that he will do the one Thing or the other; for he will come back or die. *Semb.* 1 *Leo.* 244. *Cro. El.* 269.

So, if a Leaſe be for 99 Years if *A.* lives ſo long, and after the Death of *A.* to *B.* in Fee; the Remainder will be Veſted: for it ſhall not be intended that *A.* may ſurvive the Term. *R. Pol.* 67.

So, if a Remainder commences upon a Contingency, which does not denote a Condition precedent, but the Time of the Commencement of the Eſtate: As, a Deviſe to *A.* and afterwards to his firſt, 2d, 3d and 4th Sons in Tail, and if the 4th Son dies without Iſſue, to *B*; he ſhall take tho' *A.* has no Son. *R. Mo.* 487.

So, a Deviſe to *A.* for Life, if ſhe does not marry; and if ſhe marries, to *B.* in Tail, *&c.* the Remainder to *B.* is Veſted, and not Contingent: for the Deviſe to *A.* was during her Widowhood, and the Limitation to *B. if ſhe marries*, was tantamount as *upon Determination of her Eſtate. R. Ray.* 428.

So, a Deviſe to *A.* for Life till he aliens, and then to *B. &c. R. Mo.* 487.

Or, till he diſcontinues, *&c. R.* 2 *Cro.* 697. *Jon.* 57.

So, if a Remainder be limited to a Perſon *in Eſſe*, after a Contingent Eſtate for Life, or in Tail, it ſhall be Veſted. 1 *Sal.* 224.

If an Eſtate be granted to Huſband and Wife for their joint Lives, Remainder to the Heirs of the Body of the Wife by the Huſband begotten; it ſhall be an Eſtate Tail executed in the Wife, tho' the Jointure is not ſevered. *R. Ray.* 126.

(B. 18.) When an Eſtate ſhall be executed, and not remain.

So, if there be a Contingent *meſne* Remainder between an Eſtate for Life, or Years, and the Limitation of the Inheritance, it ſhall be executed till the Contingency happens: As, if a Feoffment be to the Uſe of *B.* for Life, Remainder to the firſt Son which *B.* ſhall have, in Tail, Remainder to *B.* and his Heirs; the Eſtate is executed in *B.* till the Son be born. *Vide* 2 *Sand.* 383.

So, to *B.* for Life, Remainder to the firſt Son which *B.* ſhall have, in Tail, Remainder to the Heirs of the Body of *B.* begotten, *&c.* an Eſtate Tail is executed in *B. Cont. per* 2 *J. Cro. El.* 316. *But Acc. clearly*, 2 *Sand.* 383, 386.

So, if it be to *B.* for Life, Remainder to his firſt Son who ſhall have Iſſue Male and his Heirs for ever, and for want of ſuch Iſſue, Remainder to *B.* and his Heirs. *R. Cro. Car.* 364.

So a Deviſe to *A.* for Life, and after his Death to the Heirs of his Body, is an Eſtate Tail executed. *R. Cart.* 171. *Vide Deviſe*, (N. 5.)

So a Covenant to ſtand ſeiſed to himſelf for Life, Remainder to *A.* for Life, Remainder to the 1ſt, 2d, 3d and every other Son of his Body, and the Heirs Male of the Bodies of ſuch 1ſt, 2d and other Son iſſuing ſeverally and ſucceſſively; Provided that if *A.* dies without Iſſue Male, the Covenantor ſhall ſtand ſeiſed to the Intent to raiſe 100*l.* for a Daughter, ſhall be an Eſtate Tail executed in *A.* *R.* 2 *Jon.* 114.

So a Feoffment to the Uſe of Huſband and Wife for Life, Remainder to their firſt Son in Tail, Remainder to the Huſband and Wife and the Heirs of their Bodies, is an Eſtate Tail executed in them. *Co. L.* 28. *a.* *R.* 11 *Co.* 80.

But if an Eſtate be to *A.* for Life, Remainder to the next Heir Male of *A.* and the Heirs Male of his Body; it is not an Eſtate Tail executed in *A.* becauſe the Remainder is to his next Heir Male in the Singular Number, with Words of Limitation to his Heirs. *R.* 1 *Co.* 66. *b*, *Archer*.

Or, to *A.* for Life, Remainder *ſeniori puero* of his Body, in Tail. *R. Mo.* 104.

Tho' the Remainder to the next Heir be upon a Contingency, and in Abeyance. *Semb. Pol.* 83, &c.

So, if there be a *meſne* Remainder *in Eſſe*, the Eſtate ſhall not be executed: As, if it be to *A.* for Years, Remainder to *B.* for Life, Remainder to the right Heirs of *A.* it ſhall not be an Eſtate executed in *A.* *R.* 3 *Lev.* 407.

Or, to *A.* for Life, Remainder to his Wife, Remainder to the right Heirs which *A.* ſhall beget upon the Body of his Wife; it is not executed in *A.* becauſe of the Remainder to the Wife. *R. Ray.* 36. 1 *Sid.* 83. *R.* 2 *Lev.* 407.

Or, to *A.* for Life, and afterwards to the Wife for Life, Remainder to the Heirs of both their Bodies. *Ray.* 36. *R.* 1 *Lev.* 37.

So a Poſſibility may prevent the Execution of an Eſtate: As, if a Deviſe be to *A.* his Son and Heir, and if he dies without Iſſue living *B.* to *B.* and his Heirs; if he has Iſſue living at his Death, to the Iſſue and his Heirs; This *meſne* Poſſibility prevents the Merger of the Eſtate for Life in *A.* by the Deſcent of the Fee. 3 *Lev.* 407.

So, if an Eſtate comes by ſeveral Conveyances, it ſhall not be executed; As, if by Indenture an Eſtate is ſettled to *A.* for Life, and afterwards by Deviſe it is given to the Iſſues of the Body of *A.* *Per Holt*, *Skin.* 559.

(B. 19.) A Remainder; by what Words created.

If any Words are uſed by which an Eſtate is raiſed depending upon a Particular Eſtate, it is ſufficient: As, if a Man makes a Leaſe to *A.* for Life, and that after the Death of *A.* the Lands *redibunt* to *B.* and *C.* and their Heirs; it will be a good Remainder to them. *Pl. Com.* 29. *a.*

If a Leaſe be to *A.* for Life, Remainder to *W.* and if *W.* dies living *A.* that then it ſhall remain to *B*; it will be a good Remainder to *B.*: for it does not import that *B.* ſhall have it in the Life of *A.* if *W.* dies, but that he ſhall have it in Remainder, as *W.* had it. *Pl. Com.* 29. *b.* 32. *a.*

If a Deviſe be to *A.* for Life, and if he has Iſſue Male, to his Iſſue Male and his Heirs; a Remainder veſts in the firſt Son: for the Iſſue Male ſhall be taken as a ſingle Perſon. *R.* 1 *Sal.* 224.

(B. 20.) When it ſhall take Effect.

If a Demiſe be to *A.* for 10 Years, and of other Land to *B.* for 20 Years, Remainder after the Determination of thoſe ſeveral Leaſes, to *C*; when the 10 Years expire, the Remainder begins in the Land demiſed to *A.*: for it ſhall be conſtrued diſtributively. *R.* 5 *Co.* 7.

So a Deviſe of Land to *A.* for Life, of a Houſe to his Wife for a Year after his Death, and that after a Year and the Death of *A.* all his Lands and Tenements ſhall go to *B*; he ſhall have the Houſe at the End of the Year, tho' *A.* be then living. *R.* 1 *Lev.* 212.

If a Limitation be to the Uſe of *A.* for Life, and of other Land to the Uſe of *B.* for Life, and after the Death of *A.* and *B.* that the Whole ſhall go to *D*; he ſhall have, after the Death of each, the Land limited to him. *R. Pol.* 65, 67.

If a Deviſe be to his 2 Sons and the Heirs of their Bodies, and that his Executor ſhall have it till his Sons attain their ſeveral Ages of 21 Years; if the Eldeſt attains 21 Years, he ſhall have his Part, tho' they are Joint-tenants. *R.* 2 *Cro.* 259.

But where there are Croſs-Remainders, or by expreſs Words he in Remainder ſhall not take Part till he takes the Whole, there the Remainder ſhall not take Effect by Parcels: As, if a Deviſe be to *A.* and *B.* and their Heirs equally to be divided, *and if they die without Iſſue, I give all the Lands to D*; if *A.* dies without Iſſue, a Moiety does not go to *D*: for the Intent is expreſſed, that he ſhall take the Whole only when both are dead without Iſſue. *R. Ray.* 452. *Pol.* 425, 434. *Vide Deviſe*, (N. 14, 15.)

## (B. 21.) A Gift in Tail, with a Fee expectant.

If a Feoffment be to the Uſe of *A.* and a Woman whom he intends to marry, and their Heirs, *Habendum* to them and the Heirs of their Bodies, they have an Eſtate Tail, with a Fee expectant. *R.* 2 *Rol.* 19, 23. *Cont.* 8 *Co.* 154. *b. Co. L.* 21. *a. Vide Fait*, (E. 9.)

Or if a Feoffment be to *A.* and the Heirs of his Body, *Habendum* to him and his Heirs. *Co. L.* 21. *a.*

## (B. 22.) Alienation by Tenant in Tail.

(B. 22.) What does not bar the Iſſue.

By the *St. W.* 2. 1. *de Donis*, it was enacted, *quod non habeant illi quibus Tenementum fuit ſic datum* (*viz.* the Tenant in Tail) *Poteſtatem alienandi, &c.*

And therefore, by Common Law ſince this Statute, Tenant in Tail could not by Fine, Feoffment, Grant, Releaſe, or Confirmation, *&c.* bar the Eſtate Tail. 2 *Inſt.* 335.

Nor Tenant in Tail by Deſcent, tho' the Statute ſays, *illi quibus Tenementum fuit datum.* 2 *Inſt.* 336.

So he cannot charge the Eſtate Tail. 1 *Rol.* 841. *l.* 52.

So, if he accepts a Fine *Sur Conuzance de Droit come ceo, &c.* from another; that does not change his Eſtate. *R.* 1 *Vent.* 257.

So a Fine by him, without Proclamations, does not bar the Entail, tho' it makes a Diſcontinuance. *Semb. Jon.* 354. *Vide Fine*, (G. 1.)

(B. 23.) What ſhall be void.

If Tenant in Tail makes a Grant of a Thing not *in Eſſe*, as of a Rent *de novo* out of Land, the Grant after his Death is void as to the Iſſue. *Co. L.* 327. *b.* 3 *Co.* 85. *b. Pl. Com.* 437. 1 *Lev.* 168.

So, if he grants the next Avoidance. *R.* 1 *Rol.* 853. *l.* 5. 1 *Bul.* 32, 35.

Or be bound in a Statute-Staple, *&c. Pl. Com.* 437. *a.*

So, if Tenant in Tail in Remainder after an Eſtate for Life, grants his Eſtate to another, it determines by his Death.

So, if Tenant in Tail makes a Leaſe to commence after his Death by expreſs Words, it will be void. 1 *Sid.* 261.

But

(B. 24.) What only voidable.

But if Tenant in Tail makes a Diſcontinuance by Feoffment, *&c.* this is only voidable by Action of the Iſſue or him in Remainder or Reverſion. *Co. L.* 327. *b.* 3 *Co.* 85. *b.*

So, if by Bargain and Sale, Covenant to ſtand ſeiſed, Leaſe and Releaſe, *&c.* he conveys to a Stranger, a baſe Fee paſſes, which is not avoided till Entry of the Iſſue. *Vide Poſt*, (B. 33.)

So, if Tenant in Tail makes a Leaſe rendring Rent, not warranted by the *St.* 32 *H.* 8. it is only voidable.

Tho' the Leaſe be to commence at a future Day, and he dies before the Commencement. 1 *Rol.* 842. *l.* 50. 843. *l.* 15. *R. Pl. Com.* 437.

Or, without rendring Rent. *R.* 1 *Sid.* 261.

So, if Tenant in Tail grants an Advowſon, Common, Tithes, Rent *in Eſſe*, or other Thing which lies in Grant to another in Fee; the Iſſue in Tail may make the Grant void, or only voidable, at his Election: for he may by Entry or Claim make it void, or avoid it by a *Formedon*. *Co. L.* 327. *b.* *R.* 3 *Co.* 84, 5.

So, if Tenant in Tail grants a Reverſion or Remainder. 3 *Co.* 85. *a.* 86. *a.*

Tho' the Grant was by Fine before the *St.* 32 *H.* 8. *R.* 2 *And.* 110.

So, if Tenant in Tail makes a Feoffment, tho' he cannot retain the Eſtate or Profits; yet the Right to the Entail remains in him, which may be barred by Fine or Recovery, or, if it be not barred or forfeited, ſhall deſcend to his Iſſue. *R. Hob.* 336.

(B. 25.) What bars the Iſſue. A Fine with Proclamations. *Vide Poſt*, (B. 31.)

So, by the *St.* 4 *H.* 7. 24. A Fine in *C. B.* of Lands, Tenements and Hereditaments after ingroſſing ſhall be proclaimed the ſame Term and 3 following Terms at 4 ſeveral Days in every Term: And being ſo proclaimed, ſhall be a final Bar, and conclude all Privies and Strangers, except, *&c.* *Vide* 1 *Leo.* 75.

And by the *St.* 32 *H.* 8. 36. Fines with Proclamations by Perſons of full Age of Lands, *&c.* before ſuch Fine levied entailed to the Perſon levying the ſame, or any of his Anceſtors, in Poſſeſſion, Reverſion, Remainder, or Uſe, ſhall be a ſufficient Bar and Diſcharge for ever againſt them, or any of their Heirs claiming only by ſuch Entail, *&c.*

And therefore, if Tenant in Tail levies a Fine of Lands to him entailed with Proclamations, the Iſſue in Tail ſhall be barred by it: for the *St.* 32 *H.* 8. makes it a Bar to the Iſſue expreſly. *R. Ray.* 359. 3 *Co.* 84.

Tho' the Fine was levied of an Eſtate Tail in Reverſion or Remainder, and not in Poſſeſſion. 3 *Co.* 84. *Cro. El.* 610.

So, if Tenant in Tail be diſſeiſed and afterwards levies a Fine with Proclamations, the Iſſue ſhall be barred by it: for the Statute does not ſpeak of a Seiſin at the Time of the Fine, and the Iſſue, being privy, is eſtopped to ſay, *quod partes Finis nihil habuerunt*. *R.* 3 *Co.* 89, 90. *Cro. El.* 610.

Or makes a Diſcontinuance, and afterwards diſſeiſes the Diſcontinuee, and levies a Fine. *R.* 3 *Co.* 91. *a.* *Bend. pl.* 156. *Cro. El.* 610.

Tho' the Diſcontinuee enters and avoids the Fine, before all the Proclamations paſs. *R.* 3 *Co.* 91. *a.* *Cro. El.* 610.

So, if the King Tenant in Tail levies a Fine, *&c.* the Iſſue is barred. *R.* 7 *Co.* 32.

If the Iſſue in Tail levies a Fine, *&c.* in the Life of the Tenant in Tail, who afterwards dies, the Iſſue and all his Iſſues are barred; for the Statute ſpeaks of Lands *entailed to the Perſon levying the ſame, or any of his Anceſtors.* *R.* 3 *Co.* 51. *a.* 90. *b.*

So,

So, if the Iſſue in Tail diſſeiſes his Father, and afterwards levies the Fine. *R.* 3 *Co.* 90.

So, if Tenant in Tail has Iſſue 2 Sons, the eldeſt levies a Fine in the Life of his Father, who dies, and afterwards the eldeſt dies without Iſſue; the Fine ſhall be a Bar to the younger Brother: for he claims the Entail through his eldeſt Brother. *Per Periam, Mo.* 252. *Hob.* 258. *Co. L.* 372. *a. Jon.* 32.

So, if there be Grandfather, Father, and Son, the Grandfather Tenant in Tail, the Father levies a Fine in the Life of the Grandfather, and dies in the Life of the Grandfather, and then the Eſtate deſcends to the Son; he ſhall be barred by the Fine of his Father: for, tho' he claims from the Grandfather, yet he derives his Title through the Blood of his Father. 3 *Co.* 90. *b. Hob.* 333.

So, if *A.* Tenant in Tail, Remainder to the Heirs Male of his Father, levies a Fine, and dies without Iſſue; the Son of the Father by another Venter is barred. *R.* 3 *Leo.* 10.

So, if an Eſtate Tail be deviſed to *B.* when he attains 24 Years of Age, and he before ſuch Age levies a Fine, and after ſuch Age dies; the Iſſue is barred: for the Statute ſpeaks of Land *before the Time of the Fine entailed, &c.* which extends to an Entail *in futuro. R. Cro. El.* 122. 10 *Co.* 50. *a.* 2 *Leo.* 36. 3 *Leo.* 211. *Cro. El.* 610.

So, if Huſband and Wife be Tenants in Tail, and the Huſband alone levies a Fine; it bars the Iſſue in Tail: for he claims as Heir of the Body of both. *R. Dy.* 351. *b. R.* 9 *Co.* 140. *Bend. pl.* 257. *Dal.* 50. *R.* 1 *And.* 39. *Sav.* 9.

And if the Huſband dies, and his Wife afterwards enters and avoids the Fine (as ſhe may within 5 Years) whereby ſhe is ſeiſed of an Eſtate Tail, and the Remainders are reveſted; yet after her Death the Iſſue is barred. *Hob.* 257, 259. *Dal.* 50.

So, if the Huſband, after a Fine by him alone, declares the Uſes to him and his Wife, by which they are remitted, and the Remainders reveſted; yet the Iſſue is barred: for after the Death of the Wife the Remitter ceaſes, and the Eſtates are turned again to a Right. *Hob.* 260.

So, if Tenant in Tail of a Rent iſſuing out of the Manor of *D.* levies a Fine of the Manor, with Intent to bar the Rent; the Iſſue ſhall be barred, tho' the Rent was not expreſſed in the Fine: for it is comprized within a Fine of the Manor out of which it was iſſuing. *Per* 2 *J. Hut. Cont.* 2 *Cro.* 699. 2 *Rol.* 500.

So, if Tenant in Tail of an Office, levies a Fine of Land belonging to the Office. 2 *Rol.* 500.

If Tenant in Tail levies a Fine and dies before all the Proclamations are paſt, yet the Iſſue ſhall be barred if the Proclamations afterwards paſs. *R.* 3 *Co.* 86. *b.* 90. *a. Semb.* 2 *And.* 112.

And the Iſſue, by Entry, or Action, or Claim, before the Proclamations are all paſt, cannot avoid the Fine. *R.* 3 *Co.* 87. *a.* 90. *b.*

And every Fine ſhall be intended to be with Proclamations, till the contrary appears. *R.* 3 *Co.* 86. *b.*

And the Statutes which make a Fine with Proclamations a Bar, give all Incidents to perfect the Fine. If it be be levied by him in Reverſion, *&c.* a *Quid juris clamat, &c. R.* 3 *Co.* 86. *b.*

If Tenant in Tail levies a Fine, the Iſſue ſhall be barred, tho' within Age, out of the Realm, *Covert, Non Compos,* or in Priſon. *R.* 3 *Co.* 91. *a.*

So the King Tenant in Tail may bar by Fine. *Cro. Car.* 96, 7.

So a Fine by Tenant in Tail not only bars, but extinguiſhes the Eſtate Tail. 4 *Mod.* 5. 2 *Leo.* 37. 1 *Sal.* 338.

For a Fine by Tenant in Tail is as compleat a Bar to the Iſſue, as a Feoffment by Tenant in Fee. 1 *Leo.* 85.

And therefore, it will be as effectual a Bar when found by Verdict, as if it had been pleaded. *R.* 2 *Leo.* 37.

But if Tenant in Tail makes a Feoffment, and the Feoffee levies a Fine, the Iſſue in Tail is not barred if he claims within 5 Years after the Death of the Tenant the Tail. 3 *Co.* 87. *b.*

So, if Tenant in Tail be diſſeiſed, and the Diſſeiſor levies a Fine, and Tenant in Tail, or his Iſſue, claims within 5 Years after the Fine. 3 *Co.* 87. *b.*

So, if the Fine by Tenant in Tail was not with Proclamations, but a Fine at Common Law, it is not a Bar.

So, if Tenant in Tail levies a Fine *Sur Grant & Render*, the Iſſue may avoid it, if the Father dies before the Fine is executed. 3 *Co.* 89. *b.*

So, if Tenant in Tail, upon a Fine, grants and renders a Rent out of the Land entailed, the Iſſue is not bound by it: for the Fine was not of the Land itſelf, but of a Rent newly created. *R.* 3 *Co.* 90. *a.* *Semb. Dy.* 213. *b.* *Bend. pl.* 141. *Pl. Com.* 435. *b.*

So, if Tenant in Tail has Iſſue 2 Sons, and the eldeſt levies a Fine, and dies in the Life of his Father; the youngeſt ſhall not be barred: for he does not claim by his eldeſt Brother, nor need mention him in his Pedigree. *Per Periam*, *Mo.* 252. *R.* 2 *Cro.* 689. *R. Hob.* 332. *R. Cro. Car.* 434. 2 *Rol.* 501. *Jon.* 32.

So, if there be Tenant in Tail to him and his Wife and the Heirs Males of their Bodies, Remainder to them and their Heirs of their Bodies, the Huſband dies having Iſſue a Son and a Daughter, the Son levies a Fine, and dies without Iſſue in the Life of his Mother; the Daughter ſhall not be barred. *R. Hob.* 332.

So, if there be 3 Sons, and the middle one levies a Fine, and ſurvives his Father, but dies without Iſſue in the Life of the eldeſt Brother; his Fine ſhall not be a Bar to his eldeſt or youngeſt Brother. *Hob.* 333.

So, if the Iſſue in Tail levies a Fine, and afterwards the Tenant in Tail makes a Leaſe not warranted by the *St.* 32 *H.* 8. The Leaſe is good againſt the Conuſee, as long as the Iſſue in Tail does not fail. *R.* 2 *Cro.* 689. 2 *Rol.* 498. *Bridg.* 27. *Jon.* 60. *R.* 1 *Sid.* 62. 1 *Rol.* 843. *l.* 20. *Vide Fine*, (L.)

So, if Tenant for Life, and he in Remainder in Tail, join in a Leaſe to *A.* for Life, Remainder to *B.* for Life, and the Iſſue in Tail accepts the Rent of *A.* and levies a Fine. *R. Cro. El.* 253.

So, if Tenant in Tail makes a Leaſe, and afterwards levies a Fine; the Conuſee ſhall not avoid the Leaſe. 4 *Mod.* 6. *Dub.* 1 *Lev.* 168.

Or, if he and the Iſſue in Tail join in a Leaſe or Charge, and afterwards join in a Fine.

Or, if the Tenant in Tail makes a Leaſe, *&c.* and the Iſſue afterwards affirms it by Acceptance of Rent, and then levies a Fine.

Or, if the Iſſue in Tail makes a Leaſe, and afterwards dies, and his Iſſue, having then the Entail, levies a Fine. *R.* 4 *Mod.* 5. *Dy.* 51. *b.*

Otherwiſe, if the Leaſe was to commence *in futuro*, and the Fine was levied by the Iſſue before the Commencement. *R.* 1 *Sal.* 338. *R.* 1 *Sid.* 260. *Skin.* 284, 317.

So a Fine by Tenant in Tail of the King's Gift, the Reverſion or Remainder to the King, does not bar the Iſſue, in all Caſes where by the *St.* 34 *H.* 8. 20. a Recovery by him ſhould not be a Bar. *Co. L.* 372. *b.* *R.* 8 *Co.* 78. *a.* *Vide Poſt*, (B. 31.)

So a Fine by Tenant in Tail is not a Bar to him in Reverſion or Remainder

mainder, if he claims, or purſues his Action within 5 Years after the Tail ended. *Co. L.* 372. *a.* *Vide Fine*, (K. 1, 2.)

(B. 26.) A Real Recovery, &c.

So a Recovery in a Real Action, by Verdict upon *ne dona pas*, binds the Iſſue. 1 *Rol.* 840. *l.* 5.

So, if Tenant in Tail forfeits double the Value of the Marriage to the Lord, it binds the Iſſue. 1 *Rol.* 842. *l.* 5.

So, if Tenant in Tail grants a Rent Rent-Charge for a Releaſe of a Right to the Land, it binds the Iſſue. 1 *Rol.* 842. *l.* 10.

Or, in Purſuance of a Condition annexed to an Eſtate Tail. 1 *Rol.* 842. *l.* 20, 30.

But if a Recovery be by Default without *Voucher*, the Iſſue may falſify. 1 *Rol.* 840. *l.* 10.

Tho' the Recovery be in a Writ of Right. *Co. L.* 373. *a.*

So, if the Lord recovers in a *Ceſſavit* againſt Tenant in Tail, it does not bind the Iſſue. *Co. L.* 373. *a.*

(B. 27.) A Common Recovery. What Intereſt ſhall be barred by it. *How it ſhall be paſſed, Vide* in *Pleader*, (3 A. 2, &c.) *Who ſhall be a good Tenant to the Præcipe, Vide* in *Recovery*, (B. 3, 4.) *Vide Copyhold*, (C. 9.)

So, if Tenant in Tail ſuffers a Common Recovery, it bars the Iſſue in reſpect of the Recompence in Value. *R.* 10 *Co.* 37. *b.* *R. Poph.* 100.

Tho' he dies before Execution. 1 *Co.* 106. 2 *Rol.* 396. *l.* 10. *Dy.* 374. *a.* 376. *b.* *Vide Execution*, (A. 2, 3.)

And this has always been allowed ſince the *St. de Donis.* 10 *Co.* 37. *b.*

Tho' he had before levied a Fine, whereby his Eſtate Tail is extinct. *R.* 1 *Rol.* 223.

Tho' the Recompence in Value can never be obtained. *R.* 10 *Co.* 38. *a.*

Tho' it be erroneous; ſo long as it ſtands in Force. *R. Poph.* 100.

So, if Tenant for Life, Remainder in Tail, ſuffers a Common Recovery, and vouches him in Remainder; it bars the Eſtate Tail. *R.* 10 *Co.* 44. 3 *Co.* 60. *b.* *Cro. El.* 562, 570. *Mo.* 690.

And the Remainder in Fee. *R. Cro. El.* 562, 570. 3 *Co.* 61. *a.*

So, if Huſband and Wife are Tenants in Special Tail, Remainder to the Huſband in Tail General, Remainder to *B.* and the Huſband alone ſuffers a Recovery; tho' it is no Bar to the Wife and her Iſſue but for a Moiety, yet the Huſband having a Remainder in Tail General, all ſubſequent Remainders are barred. *R.* 3 *Lev.* 108.

So a Common Recovery by Tenant in Tail bars all Remainders, or the Reverſion depending upon it. 2 *Rol.* 396. *l.* 7. 6 *Co.* 42.

And all Charges granted by him in Reverſion, or Remainder. *R.* 1 *Co.* 63. *a.* *Poph.* 5.

So, if he in Remainder makes a Leaſe for Life, upon Condition; a Recovery by Tenant in Tail bars the Eſtate for Life, and alſo the Condition. *R.* 2 *Co.* 52. *b.*

So a Remainder to the right Heirs of *B.* ſhall be barred, tho' it be in Abeyance. *R.* 6 *Co.* 42. *a.* *Per Gawdy*, 1 *Co.* 135. *b.* 136. *a.*

So, a Remainder for Years: for the Leſſee cannot falſify. *Per Twiſd.* 1 *Sid.* 102. 2 *Lev.* 30.

So, a Deviſe to another, upon a Contingency after the Death of Tenant in Tail without Iſſue. *R. Mo.* 73.

So, if an Eſtate Tail be granted, and afterwards to the Uſe that *B.* ſhall have a Rent-Charge, Remainder over; a Common Recovery by the Tenant in Tail bars the Rent-Charge. *R.* 2 *Lev.* 29, 30.

And, this, tho' the Recompence in Value does not extend to the Rent: for the ſuppoſed Recompence is the Cauſe of the Bar to the Iſſue, but the Ground of the Bar of the Reverſion or Remainder is, that it is a Common Aſſurance, and *quaſi* excepted out of the *St. de Donis.* *Per Hale*, 2 *Lev.* 30.

So,

So, if there be Tenant in Tail, rendring Rent to him in the Reverſion, with Condition of Re-entry for Non-payment; a Common Recovery by the Tenant in Tail bars the Condition. 2 *Lev.* 30. *Cont. Sal.* 570, 1.

So, by a Common Recovery, a Power to make a Jointure, Leaſes, *&c.* ſhall be barred. *R.* 2 *Lev.* 60. *Vide Poiar*, (D.)

So a Common Recovery bars the Right of having a Writ of Error to reverſe a Fine by Tenant in Tail. *R. Mo.* 365.

So a Common Recovery bars a collateral Condition annexed to an Eſtate Tail: As, if a Gift in Tail be, upon Condition to pay a Sum in Groſs, and for Non-payment to re-enter. *Sal.* 571.

Or, upon Condition, that if the Donee marries any other than *Searle*, the Eſtate goes over. *R. Sal.* 570.

So, if Tenant in Tail leaſes for Years, acknowledges a Judgment, *&c.* and afterwards ſuffers a Common Recovery to make a Jointure, *&c.* the Recovery enures for Confirmation of the Leaſe, *&c.* *R. Ca. Ch.* 120. 2 *And.* 111. *Vide Ante*, (B. 25.)

(B. 28.) If it be with ſingle *Voucher*.

If the *Præcipe* be againſt the Tenant in Tail himſelf, the Eſtate ſhall be barred of which he was actually ſeiſed, and all Remainders dependant upon it.

If Tenant in Tail, in Remainder after an Eſtate for Life, diſſeiſes the Tenant for Life, and ſuffers a Recovery with Single *Voucher*, the Entail is barred: for the *Diſſeiſin* extends only to the Eſtate for Life, and does not turn the Eſtate Tail to a Right. *Cont. Semb.* 3 *Co.* 59. *a.* *Acc.* 2 *Rol.* 395. *l.* 10.

But no Eſtate ſhall be barred, which was turned to a Right, and of which the Tenant to the *Præcipe* had not actual Seiſin, or Seiſin in Law. 2 *Rol.* 394. *l.* 50.

And therefore, if Tenant in Tail makes a Feoffment to the Uſe of himſelf in Fee, or in Tail, and afterwards ſuffers a Recovery, the firſt Eſtate Tail is not barred: for he was ſeiſed only of the Eſtate raiſed by the Feoffment. *Pl. Com.* 8. *a.* *Manxel.*

So, if he covenants to ſtand ſeiſed to the Uſe of himſelf for Life, and afterwards to his Son in Tail, and afterwards ſuffers a Recovery with Single *Voucher*. *R. Yel.* 51.

So, if Tenant in Tail diſcontinues, and takes back an Eſtate Tail, and a Recovery is had againſt him. 3 *Co.* 5. *b.*

So, if Tenant in Tail be diſſeiſed, and the Diſſeiſor enfeoffs him, and afterwards he ſuffers a Recovery with Single *Voucher*. *R.* 3 *Co.* 59. *a.* 2 *Rol.* 395. *l.* 5.

So, if there be Tenant for Life, Remainder to *A.* in Tail, and a Recovery is pleaded to be had againſt *A. tunc tenentem liberi tenementi*, (which ought to be intended to be by *Diſſeiſin*, when the Tenant for Life appears by the ſame Record to be living,) with Single *Voucher*; the Entail is not barred by it. 3 *Co.* 59. *a.*

So, if Huſband and Wife are ſeiſed in Tail, and a Recovery is had againſt the Huſband alone. 3 *Co.* 5. *b.*

So, if *A.* Tenant for Life, Remainder to *B.* in Tail, joins in a Fine *Sur Grant & Render* to *A.* for Life, and afterwards to *B.* in Fee, and then *B.* ſuffers a Recovery with Single Voucher to the Uſe of himſelf in Fee; the Entail is not barred: for tho' the Fine did not make a Diſcontinuance, being by *B.* not ſeiſed in Tail, yet the Eſtate Tail was deveſted by it, ſo that he was not ſeiſed in Tail at the Time of the Recovery. *R. Cro. El.* 826.

If *A.* Tenant in Tail leaſes to *B.* for Life, (which is a Diſcontinuance,) and dies, and *B.* ſurrenders upon Condition to *C.* who has the Remainder

in Tail, againſt whom a *Præcipe* is brought, and a Recovery had; the Eſtate Tail of *C.* is not barred; for *C.* was not remitted. *R. Skin.* 3, 63.

(B. 29) If it be by Tenant in Tail as Vouchee.

If Tenant in Tail be Vouchee in a Common Recovery, he comes in in Privity of ſuch Eſtate as he ever had. *Pl. Com.* 8. *a. Manxel.*

And therefore, if Huſband and Wife, ſeiſed to them and the Heirs of the Body of the Huſband, make a Diſcontinuance, and the Diſcontinuee ſuffers a Recovery, and vouches the Huſband; the Tail ſhall be barred. *R.* 3 *Co.* 6. *R.* 6 *Co.* 32. *a.*

If Tenant in Special Tail diſcontinues, and takes back an Eſtate in Tail General, and afterwards takes back an Eſtate to him and his Heirs upon *B.* begotten, and afterwards diſcontinues, and the Diſcontinuee ſuffers a Recovery, and vouches the Tenant in Tail; the 3 ſeveral Entails are barred by one Recompence: For the Vouchee comes in in Privity of all the Eſtates. *Pl. Comb.* 8. *b.* 3 *Co.* 6.

So, if the Tenant vouches a Stranger at firſt, who afterwards vouches the Tenant in Tail; his Eſtate ſhall be barred. *R. Sal.* 571.

So, if the Heir be vouched, he comes in in Privity of the Eſtate of his Anceſtor to whom he was Heir: As, if Tenant in Fee makes a Feoffment, and the Feoffee ſuffers a Recovery, and vouches the Heir of the Feoffor. *Semb. Pl. Com.* 7. *b.*

So, if Tenant in Tail in Poſſeſſion and he in Remainder be jointly vouched, tho' it be not ſo regular, yet the Vouchee ſhall be barred: for the joining of a Stranger with him does not prejudice. *R. Sal.* 571.

But the Vouchee comes in in the ſame Degree as he had the Eſtate at firſt: And therefore, if a Recovery would not bar his Eſtate when he was ſeiſed, it ſhall not be barred if he be a Vouchee. *Pl. Com.* 7. *b.*

So, if a Parſon enfeoffs with Warranty, and be vouched, he ſhall pray in Aid of the Patron and Ordinary. *Pl. Com.* 7. *a.*

If Tenant by the Curteſy enfeoffs with Warranty, and is vouched; he ſhall have Aid: for he comes in in the ſame Plight as when he was ſeiſed of the Land. *Pl. Com.* 7. *b.*

(B. 30.) What Intereſt is not barred.

But a Common Recovery does not bar an Intereſt precedent to the Eſtate Tail of which the Recovery was ſuffered: As, if Tenant in Tail, Remainder to *A.* Remainder to *B.* Remainder to *C.* makes a Feoffment, and the Feoffee ſuffers a Recovery, and vouches *B*; his Eſtate Tail and all the ſubſequent Remainders are barred; but not the Eſtate of *A.* or other precedent Eſtates. *R.* 3 *Co.* 6.

So, if Tenant in Tail makes a Leaſe, and afterwards ſuffers a Recovery; the precedent Leaſe is not barred. *R. Cro. El.* 718. *Eq. Abr.* 257. *Vide Ante*, (B. 25.)

So, if an Eſtate be granted to *B.* in Tail, rendring Rent to him in the Reverſion and *B.* ſuffers a Recovery; the Rent ſhall not be barred. *R. Cro. El.* 792. *Per Hale*, 2 *Lev.* 30. *Sal.* 571.

So, if Tenant in Tail makes a Mortgage, and afterwards ſuffers a Recovery for a collateral Purpoſe; the Mortgage ſhall be confirmed by the Recovery. *Eq. Abr.* 257.

So, generally, a Common Recovery does not bar a Thing to which the Recompence in Value does not extend; As, if a Man be not in in Privity of the Eſtate Tail: As, if Tenant in Tail be attainted of Treaſon, and the King grants his Eſtate to *A.* who enfeoffs *B.* who ſuffers a Recovery, in which *A.* is vouched; the Eſtate Tail is not barred; for *A.* claims *paramount* the Entail. 2 *Rol.* 394. *l.* 40.

So, if Tenant in Tail be attainted of Treaſon, and afterwards ſuffers a Recovery; this does not bar the Remainder. 2 *Rol.* 394. *l.* 37.

If Tenant in Tail enfeoffs *B.* who ſuffers a Common Recovery without vouching the Tenant in Tail. *Ray.* 29.

So a mere Poſſibility ſhall not be barred by a Recovery: As, if a Deviſe be to *A.* and his Heirs, and if he dies without Iſſue in the Life of *B.* to *B*; a Recovery by *A.* without joining *B.* does not bar his Poſſibility. *R.* 2 *Cro.* 593. 2 *Rol.* 394. *l.* 20.

But if *B.* comes in as Vouchee, his Poſſibility ſhall be barred. 2 *Cro.* 593.

So in all Caſes of an Executory Deviſe, a Recovery does not bar him who claims by ſuch Deviſe. *R.* 1 *Lev.* 136.

So a Recovery by a Mortgagee, does not bar the Mortgagor, if he be not vouched. *R.* 2 *Cro.* 593.

So, if an Eſtate be granted to *A.* and his Heirs ſo long as *B.* has Heirs of his Body; a Recovery by *A.* does not bar the Donor: for a Recovery by Tenant in Fee does not bar a collateral Intereſt; as a Condition, Covenant, *&c.* *Per Houghton*, 2 *Cro.* 593.

(B. 31.) If the Reverſion, or Remainder, be in the King.

So, by the *St.* 34 & 35 *H.* 8. 20. A Common Recovery by Tenant in Tail of Lands, *&c.* whereof the Reverſion, or Remainder at the Time of ſuch Recovery ſhall be in the King, ſhall not bind the Heirs in Tail. *R. Dy.* 32. *a. in Marg.*

So, if there be Tenant in Tail, Remainder in Tail, the Reverſion or Remainder to the King; a Common Recovery by the Tenant in Tail does not bar the firſt Remainder, any more than the Heirs in Tail. *Co. L.* 372. *b.*

So, if the King after a Gift in Tail, grants the Reverſion to another in Tail, the Fee to the King; a Recovery by Tenant in Tail does not bar the Reverſion in Tail. *R.* 8 *Co.* 77, 8.

So, if the King procures a Subject, for Money, *&c.* to make to *B.* an Eſtate Tail, for Recompence of Service, *&c.* Remainder to the King, and this appears upon Record; *B.* by Recovery cannot bar the Entail. *Co. L.* 372. *b.* 2 *Co.* 16. *a.*

And this Statute extends to ſubſequent as well as precedent Gifts in Tail by the King. *Co. L.* 373. *a.*

So a Fine does not bar the Eſtate Tail, where it was given by the King, and the Reverſion continues in the Crown. 1 *Sid.* 166. *Acc. Cro. El.* 595.

But this *St.* 34 *H.* 8. 20. does not extend to an Eſtate Tail made by a Subject, tho' he afterwards grants the Reverſion or Remainder to the King. *Co. L.* 372. *b.* 2 *Rol.* 393. *l.* 50. 396. *l.* 15. *R. Mo.* 195. 2 *Co.* 15. *b.* 1 *And.* 142. 46. *Lut.* 848.

Or, it deſcends afterwards to the King. *Co. L.* 372. *b.* *R.* 2 *Co.* 15. *b.*

Or, if the Reverſion or Remainder be to the King only for Life, or Years. *Co. L.* 372. *b.*

Or, if the Reverſion or Remainder be granted over by the King, before the Recovery ſuffered. *Co. L.* 372. *b.* *Ray.* 288.

So, if the Eſtate Tail be created by the King for a valuable Conſideration. *Per* 3 *J. Dy.* 32. *a. in Marg.*

So, if an Eſtate Tail be varied by a new Act of Parliament. *Dub. Ray.* 260, 286, 319.

If the Reverſion be granted by the King to *A.* to the Intent that there ſhall be a Recovery, and that it ſhall be afterwards regranted to the King. *R. Hard.* 409.

Yet

Yet where a Reverſion or Remainder is in the King, a Recovery by Tenant in Tail cannot bar or deveſt ſuch Reverſion, *&c.* And therefore, if a Recovery be by Tenant in Tail, (which was not by Gift of the King,) the Reverſion or Remainder to the King; the Eſtate Tail and all Remainders are barred, except the Eſtate of the King. 2 *Rol.* 394. *l.* 2. *R. Bend. pl.* 254. *Dy.* 32. *a.* 1 *And.* 142.

So, if a Recovery be by Tenant in Tail, Remainder to the King in Tail, Remainder to *B.* in Fee; the Eſtate Tail and Remainder in Fee are barred. 2 *Rol.* 394. *l.* 5. *Lut.* 848.

And where a Recovery is a Bar, a Fine with Proclamations ſhall be a Bar to the Entail, tho' the Reverſion be in the King. *Co. L.* 373. *a.*

So, a Fine *Sur Grant & Render*. *Sav.* 106.

So a Fine by a Diſſeiſee of an Eſtate Tail of the Gift of the King, and Non-claim for 5 Years, ſhall be a Bar to the Tail. *Co. L.* 373. *a. Dub. Cro. El.* 595. *Said that it is not Law.* 1 *Sid.* 166. *Vide Fine*, (K. 1, 2.)

So, a collateral Warranty of the Anceſtor of the Tenant in Tail. *Co. L.* 373. *a.*

But a Fine by Tenant in Tail, where the Reverſion is in the King, does not deveſt the Reverſion, but paſſes the Eſtate to the Conuſee, during the Continuance of the Entail. *R.* 3 *Leo.* 57. 4 *Leo.* 40. *Per* 3 *J. before the St.* 34 *H.* 8. *Dy.* 32. *a.*

If a Reverſion upon an Eſtate Tail be granted to the King, and before the Deed is inrolled, a Recovery is ſuffered; the Reverſion is barred. *Dub. Mo.* 752.

So, by *St.* 32 *H.* 8. 28. All Leaſes by Writing indented under Seal, for Years, or Life, by any of full Age, having an Eſtate in Fee Tail, ſhall be good againſt the Leſſor and his Heirs, in like Sort as if he had been ſeiſed in Fee Simple. (B. 32.) A Demiſe purſuant to the *St.* 32 *H.* 8.

Provided not to extend to Leaſes of Lands then in Leaſe, if the ſame be not ſurrendred or ended within a Year after the new Leaſe, nor of Lands not moſt commonly letten for 20 Years next before, nor to Leaſes without Impeachment of Waſt, or above 21 Years, or 3 Lives from the Day of making, or whereon is not reſerved during the Term the moſt accuſtomable Rent paid for the ſame Tenements for 20 Years next before. *Vide Baron and Feme*, (G. 3) *Vide Poſt*, (G. 4, 5.)

And that the Iſſue in Tail may have the Reverſion, Rents, and Services, and all Remedies and Advantages after the Death of the Leſſor, in the ſame Manner as the Leſſor himſelf if living might have had.

But a Demiſe by any, not having the Eſtate Tail, does not bind his Iſſue: As, if Land be given to *A.* and his Wife, and the Heirs of the Body of the Survivor, and they make a Leaſe for 21 Years, or 3 Lives, purſuant to the Directions of the Statute; that does not bind the Iſſue: for the Eſtate Tail does not veſt, till the Time of the Survivorſhip, in the Survivor. *R.* 10 *Co.* 51. *a.*

So a Demiſe by Tenant in Tail does not bind his Iſſue, if it be not by Indenture. *Vide Poſt*, (G. 5.)

If it does not commence from the Making, or the Day of the Making. *Vide Poſt*, (G. 5, 8.)

If it be above 3 Lives, or 21 Years. *Vide Poſt*, (G. 5.)

Or, diſpuniſhable for Waſt. *Vide Poſt*, (G. 5.)

Or, of Lands not moſt commonly letten, or occupied by the Farmers thereof, by the Space of 20 Years next before. *Vide Poſt*, (G. 5.)

Or, if there be not reſerved during the Term the moſt accuſtomable Rent paid within 20 Years before. *Vide Poſt*, (G. 5.)

Yet if more be reſerved than the accuſtomable Rent, it is good. *Co. L.* 44. *b.*

So, if the antient *yearly Rent* be reſerved, it is ſufficient; tho' a Heriot, Fine upon the Death of the Tenant, or other caſual Profit, not annual, be not reſerved. *Co. L.* 44. *b.* *Vide Poſt*, (G. 5.)

So, if Tenant in Tail demiſes Part of Land moſt accuſtomably letten, and reſerves a Rent *pro ratâ*, it is ſufficient. *Co. L.* 44. *b.*

Or, if Parceners in Tail make Partition, and each demiſes her Part, reſerving a Rent *pro ratâ*. *Co. L.* 44. *b.*

So, if Tenant in Tail to him and the Heirs Male of the Body of his Grandfather, demiſes, rendring Rent to him and his Heirs, and dies without Iſſue Male, having a Daughter who is his Heir; the Leaſe ſhall be good: for the Rent follows the Reverſion. *R. Hard.* 90, 95.

So a Demiſe by Tenant in Tail does not bind him in Reverſion, or Remainder. *Noy* 6. *R. Cro. El.* 602. *R.* 8 *Co.* 34. *a.* *Cont. Dy.* 48. *b.* *But Acc. in Marg.*

So a Leaſe by a Woman Tenant in Tail, who takes Huſband, and the Huſband, being Tenant by the Curteſy, ſurrenders to the Iſſue, does not bind the Iſſue. *Mo.* 8.

(B. 33.) How an Alienation by Tenant in Tail operates as to himſelf.

If Tenant in Tail levies a Fine, or ſuffers a Recovery, the whole Right of the Entail is barred and extinguiſhed. *Hob.* 337.

If he levies a Fine to him in Reverſion; the Entail is extinct, and the Conuſee is in in his Reverſion. *Jon.* 33.

If he makes a Feoffment, the whole Eſtate is gone as to himſelf; but the Right of the Entail remains in him, which ſhall afterwards deſcend to his Iſſue in Tail. *Hob.* 336.

But if Tenant in Tail, in Remainder after an Eſtate for Life, levies a Fine *Sur Conceſſit* to the Tenant for Life, it does not make an Alteration of the Entail after the Life determined. *R.* 2 *Cro.* 40.

Tho' it be to Huſband and Wife for the Life of the Wife who was Tenant for Life; and it is no Diſcontinuance or Bar to the Entail but for her Life only. *R.* 2 *Cro.* 40.

If Tenant in Tail grants *totum ſtatum ſuum* to another; the Grantee has an Eſtate only for the Life of Tenant in Tail; but the Eſtate Tail ſhall be in Abeyance. *Lit. S.* 650.

So, if he releaſes to a Diſſeiſor all his Right, the Right to the Inheritance in Tail is in Abeyance. *Lit. S.* 649.

So, if Tenant in Tail be attainted for Felony, and the King, upon Office, enters; the Eſtate Tail ſhall be in Abeyance. *Co. L.* 345. *a.*

And after a Grant of *totum ſtatum ſuum*, the Tenant in Tail cannot maintain Waſt: for no Reverſion remains in him. *Lit. S.* 650.

So, if he grants *totum ſtatum ſuum*, Remainder to another, the Remainder is void: for nothing remains in him after his whole Eſtate is granted. *R.* 2 *Co.* 52. *a.*

If Tenant for Life, the Reverſion or Remainder to the King, grants *totum ſtatum* to *A.* who dies in the Life of the Grantor; the King ſhall have it immediately. *Sav.* 62.

But a Grant of his whole Eſtate by the King Tenant in Tail is void: for the King is deceived in his Grant. 1 *Co.* 46. *a.* 52. *a.*

If there be Tenant in Tail, Remainder to *B.* in Tail, and *B.* by Deed inrolled conveys to the King and his Heirs; nothing paſſes but for the Life of *B.* *Dub. Godb.* 442.

If Tenant in Tail covenants to ſtand ſeiſed to the Uſe of himſelf for Life, Remainder to his Son in Tail; this does not make an Alteration in his Eſtate, but

but he remains Tenant in Tail as before, and his Wife ſhall be endowed, *&c.* *R. Mo.* 32. *R. Yel.* 51. *R.* 2 *Co.* 52. *a.* *R. Cro. El.* (471.) And tho' theſe Books ſpeak of an Alteration for his own Life, yet in Reality there is not any Alteration. *R. Tr.* 1 *An. B. R. inter Machel and Clerk.* (*Vide Sal.* 619. *Comyns's Rep.* 119.) *R. Cro. El.* 895. *Noy* 46. 1 *Brownl.* 193. *R.* 1 *And.* 291. *R. Cro. El.* 279.

So, if he makes a Bargain and Sale to *B.* who rebargains to him, he ſhall be Tenant in Tail as before. *Yel.* 51.

So, if he grants an Advowſon to *B.* to the Uſe of himſelf and his Wife and to the Heirs Male of the Huſband; it ſhall be void as to the Wife after the Death of the Huſband. *R.* 1 *Brownl.* 161.

Yet it ſeems that to ſome Reſpects there is an Alteration as to himſelf: for a Recovery afterwards by him with Single *Voucher*, does not bar Remainders depending on the firſt Entail: for he was not ſeiſed of the firſt Eſtate Tail. *R. Yel.* 51.

But if Tenant in Tail bargains and ſells to *B.* and his Heirs; a baſe Fee paſſes, which ſhall not be avoided till Entry of the Iſſue. *Per Holt, Tr.* 1 *An. inter Machel and Clerk.* (*Vide Sal.* 619. *Comyns's Rep.* 119.) *R.* 10 *Co.* 96. *a.*

So, if he conveys by Leaſe and Releaſe to *B.* and his Heirs. *R. inter Machel and Clerk.* (*Vide Sal.* 619. *Comyns's Rep.* 119.) It is called a Freehold deſcendible, 1 *Sand.* 261.

Or, covenants to ſtand ſeiſed to *B.* and his Heirs. *Per Holt, inter Machel and Clerk.*

So, if he covenants to ſtand ſeiſed to the Uſe of himſelf for Life, Remainder to *B.* and his Heirs. *R. Tr.* 1 *An. inter Machel and Clerk.* (*Vide Sal.* 619. *Comyns's Rep.* 119.)

Or, bargains and ſells to the Uſe of himſelf for Life, Remainder to *B.* and his Heirs. *R. inter Machel and Clerk.* (*Vide Sal.* 619. *Comyns's Rep.* 199.)

Or, if he covenants to ſtand ſeiſed to *A.* for Life, Remainder to *B.* and his Heirs; tho' *A.* dies in the Life-time of the Tenant in Tail. *Per Holt, inter Machel and Clerk.* (*Vide Sal.* 619. *Comyns's Rep.* 119.)

Or, to himſelf for Years if he ſhall ſo long live, Remainder to his Son for Life, *&c.* *Dub.* 2 *Lev.* 84.

If the Bargainee of Tenant in Tail, *&c.* enters; his Eſtate deſcends to his Heir, till it be avoided. *D.* 10 *Co.* 98. *a.*

And his Wife ſhall be endowed. 24 *Ed.* 3. 28. *b.* 10 *Co.* 98. *a.* *Cont. per Vaut. Cart.* 210. *D. Cont. Cro. El.* 805.

Nor ſhall he be ſubject to Waſt or Forfeiture. 10 *Co.* 98. *Cart.* 210.

And his Deviſe is good till avoided. *Dy.* 253. *Cont. Cro. El.* 805. *Cart.* 210. *R.* that the Deviſe is void. 1 *Sand.* 261.

## (C) An Eſtate Tail after Poſſibility of Iſſue extinct.

### (C. 1.) What ſhall be.

TENANT in Tail after Poſſibility of Iſſue extinct, is, when by the Death of one of the Tenants in Special Tail, there is no Poſſibility of Iſſue inheritable to the ſame Entail, the Survivor is Tenant in Tail after Poſſibility, *&c.* As, if a Gift in Tail be to Huſband and Wife and the Heirs of their Bodies begotten, and one of them dies without Iſſue. *Lit. S.* 32.

Or, if they have Iſſue, and after the Death of one, the Iſſue dies without Iſſue. *Lit. S.* 32.

So, if a Gift be to a Husband and the Heirs of his Body begotten upon *A.* his Wife, and *A.* dies without Issue. *Lit. S.* 33.

Or, to a Husband with a Daughter or Cousin in *Frankmarriage*, and the Wife dies without Issue; the Husband is Tenant in Tail after Possibility, *&c. Co. L.* 28. *b.*

But if there be any Possibility of Issue inheritable to the Entail, the Survivor shall not be Tenant in Tail after Possibility, *&c.* As, if Husband and Wife to them and the Heirs of their Bodies be each 100 Years of Age, they are not Tenants after Possibility, *&c.* for the Law does not intend an Impossibility of Issue. *Co. L.* 28. *a.*

So Donee in Tail General can never be Tenant in Tail after Possibility: for there never can be in him an Impossibility of Issue inheritable to his Estate. *Lit. S.* 34.

Nor, the Issue of a Donee in Special Tail. *Lit. S.* 34.

And therefore, if a Gift be to a Husband and the Heirs of his Body, Remainder to him and his Wife and the Heirs of their Bodies, tho' the Husband dies without Issue, the Wife shall not be Tenant after Possibility, *&c.* for the Remainder after the Tail General never took Effect. *Co. L.* 28. *b.*

So no one can become Tenant after Possibility but by the Act of God: and therefore, if Husband and Wife by Feoffment take an Estate which is limited to the Use of them for their Lives, and afterwards to their first Issue Male in Tail, and afterwards to the Heirs of their Bodies; tho' they have an Estate in Special Tail executed, yet if Issue be born, they become Tenants for Life only, and not Tenants in Tail after Possibility, *&c. Co. L.* 28. *a.*

So, if Tenants in Special Tail are divorced *a Vinculo*, they have but a Estate for Life: but neither shall have the Privilege of Tenant after Possibility, *&c.* because the Divorce was not by the Act of God, but *ex proviso Hominis*, *Co. L.* 28. *a.*

## (C. 2.) In what Respects Tenant in Tail after Possibility, &c. is regarded only as Tenant for Life.

*Vide Ante*, (C. 1.)

Tenant in Tail after Possibility, *&c.* may make an Exchange with Tenant for Life: for their Estates are equal in Quantity, tho' not in Quality. *Co. L.* 28. *a.*

So, if Tenant in Tail after Possibility, *&c.* makes a Feoffment, it will be a Forfeiture. *Co. L.* 28. *a. Vide Forfeiture*, (A. 1.)

Or, if he otherwise aliens in Fee. *Co. L.* 28. *b.*

So his Estate shall be merged by a Descent or Conveyance of the Reversion, or Remainder to him in Fee, or in Tail: for the Fee, or the Estate Tail shall be executed. *Co. L.* 28. *a.*

So, upon his Default, there shall be Receipt of him in Reversion, or Remainder. *Co. L.* 28. *a.*

So, if he cuts down Trees, the Lessor shall take them, tho' Waste does not lie against him. 4 *Co.* 53. *a.*

## (C. 3.) What Privileges he claims above a Tenant for Life.

But in respect of his Estate, which was originally an Estate Tail, Tenant after Possibility, *&c.* shall not be punished for Waste. *Co. L.* 27. *b.*

Nor compellable to attorn to a Grant of the Reversion. *Co. L.* 27. *b.*

Nor shall he have Aid of him in the Reversion. *Co. L.* 27. *b.*

So

So a Writ of *Conſimili Caſu* does not lie upon his Alienation; nor a Writ of Intruſion after his Death. *Co. L.* 27. *b.*

So in a Writ of Right he may join the *Miſe* in a ſpecial Manner. *Co. L.* 27. *b.*

And in a *Præcipe* by or againſt him, he ſhall not be named as Tenant for Life. *Co. L.* 27. *b.*

But an Aſſignee of an Eſtate after Poſſibility, *&c.* ſhall not have any Privilege above a Tenant for Life: for the Privity, by the Aſſignment, is gone; and with it the Privileges. *Co. L.* 28. *a.* 11 *Co.* 83. *b.*

## (D) Tenant by the Curteſy of England.

### (D. 1.) Who ſhall be.

IF a Man takes a Wife ſeiſed in Fee, or in Tail, by whom he has Iſſue, he ſhall hold, by the Curteſy of *England*, the Lands after the Death of his Wife, for his Life. *Lit. S.* 35.

So, if the Wife be ſeiſed of any Eſtate which ſuch Iſſue might inherit.

Tho' the Wife afterwards dies without Iſſue, by which her Eſtate is determined. *R.* 8 *Co.* 34. *Paine.*

So, if the Wife ever was ſeiſed, tho' ſhe be afterwards diſſeiſed. *Co. L.* 30. *a.*

So, if the Wife had only a Seiſin in Law, where a Seiſin in Fact was not poſſible: As, if an Advowſon deſcends to a Woman, who takes Huſband, has Iſſue, and dies before Avoidance. *Co. L.* 29. *a.*

Or a Rent deſcends, and ſhe dies before Rent incurs. *Co. L.* 29. *a.*

A Man ſhall be Tenant by the Curteſy of Lands, or Tenements.

Of Rents, Advowſons, Commons, &c.

Tho' the Rent, Common, *&c.* be ſuſpended, when the Suſpenſion is only for Years. *Co. L.* 29. *b.*

Of an Office, or Dignity. *Co. L.* 29. *a. b.*

Of a Caſtle, or *Caput Baroniæ vel Comitatus.* *Co. L.* 30. *b.*

Of Common *ſans nombre.* *Co. L.* 30. *b.*

So a Man ſhall be Tenant by the Curteſy tho' the Eſtate Tail, *&c.* of which the Wife was ſeiſed be determined. *Co. L.* 30. *a.*

And if a Huſband has Iſſue by his Wife, it is ſufficient to make him Tenant by the Curteſy, tho' the Iſſue dies immediately: for if it be born alive it is ſufficient. *Co. L.* 29. *b.*

Tho' it was never heard to cry: for Crying is but Evidence of the Life. *Co. L.* 29. *b.*

Tho' the Iſſue be born and dies before the Eſtate deſcends to the Wife. *Co. L.* 29. *b.* 8 *Co.* 35. *b.* *Bro. Tenant per Curteſy* 12.

So, by the Cuſtom of *Gavelkind*, a Man ſhall be Tenant by the Curteſy without having Iſſue. *Co. L.* 30. *a.*

And by having Iſſue, the Huſband, in the Life of his Wife, ſhall do Homage alone. *Co. L.* 30. *a.*

And an Avowry ſhall be made upon the Huſband alone. *Co. L.* 30. *a.*

If the Huſband after Iſſues makes a Feoffment, the Feoffee ſhall hold during the Life of the Huſband: for his Feoffment was not a Forfeiture. *Co. L.* 30. *a.*

But by the Feoffment his Title to be Tenant by the Curteſy was extinguiſhed: and therefore, if the Feoffment was upon Condition, and he enters for the Condition broken; he ſhall not afterwards be Tenant by the Curteſy. *Co. L.* 30. *b.*

So,

So, if he levies a Fine, which is reverſed after the Death of his Wife; his Title to be Tenant by the Curteſy ſhall be extinct. *Semb.* 5 *Mod.* 67.

Otherwiſe, if the Fine be reverſed by Error in the Life of his Wife: for he has afterwards a new Title. 5 *Mod.* 67.

## (D. 2.) Who not.

But a Man ſhall not be Tenant by the Curteſy, where the Wife is not ſeiſed of ſuch Eſtate as that the Iſſue which her Huſband has by her may, by Poſſibility, inherit the ſame Eſtate.

As, if a Woman has an Eſtate to her and the Heirs Male of her Body, and ſhe has Iſſue a Daughter; her Huſband ſhall not be Tenant by the Curteſy. *Co. L.* 29. *b.*

If a Woman Tenant in Tail makes a Diſcontinuance, and takes back an Eſtate in Fee, and then takes Huſband, has Iſſue, and dies; the Iſſue, by a *Formedon*, may recover the Eſtate Tail in the Life of its Father: for ſhe was not ſeiſed of the Tail during the Coverture. *Co. L.* 29. *b.*

If an Eſtate be given to 2 Women and the Heirs of their Bodies, and one of them takes Huſband, and has Iſſue. *Cont. Co. L.* 30. *a. Acc.* 2 *Rol.* 90. *l.* 50. *Semb. acc. Co. L.* 183. *Eq. Ca.* 150. *

* 2d Part of 2 *Mod. Ca.*

So he ſhall not be Tenant by the Curteſy of a Seiſin in Law, where by Poſſibility ſhe might have obtained an actual Seiſin: As, if Lands deſcend to a Woman, who takes Huſband, has Iſſue, and dies before Entry. *Ca. L.* 29. *a.*

So he ſhall not be Tenant by the Curteſy of a bare Right or Title. *Ca. L.* 29. *a.*

Nor, of a Reverſion, or Remainder, expectant upon an Eſtate of Freehold. *Co. L.* 29. *a.*

Nor, of a Seigniory, Rent, or Common, *&c.* ſuſpended for Life. *Ca. L.* 29. *b.*

So, if the Eſtate of the Wife determines with her Life by expreſs Limitation or Condition, tho' the Wife had a Fee by a ſubſequent Remainder, or by Deſcent, the Huſband ſhall not be Tenant by the Curteſy: As, if an Eſtate be limited to the Wife for Life, afterwards to the firſt, 2d, and other Sons in Tail, Remainder to the right Heirs of the Body of the Wife, Remainder to her in Fee; her Huſband ſhall not have it by the Curteſy. *Eq. Ca.* 150. *

* 2d Part of 2 *Mod. Ca.*

Or, if a Deviſe be to a Woman for Life, with a Contingent Remainder to her Iſſue, by which the Fee deſcends in the mean Time to the Woman, being Heir to the Teſtator; her Huſband ſhall not be Tenant by the Curteſy. *R. Eq. Ca.* 150. *

* 2d Part of 2 *Mod. Ca.*

So he ſhall not be Tenant by the Curteſy, if he has not Iſſue born alive.

If the Iſſue be ript out of the Belly of its Mother, tho' it be alive. *Co. L.* 29. *b.*

If the Iſſue be a Monſter which has not human Form. *Co. L.* 29. *b.*

So, if after Iſſue he be attainted for Felony, and pardoned; he ſhall not be Tenant by the Curteſy, if he has not Iſſue after the Pardon. *Per Keble*, 13 *H.* 7. 17. *a.*

# Tenant in Dower.

Who ſhall be, and who not, *Vide* in *Dower*, (A. 1, 2, &c.)

## (E) Tenant for Life.

### (E. 1.) Who ſhall be.

TENANT for Term of Life ſhall be, when Lands are demiſed to a Man for his Life. *Lit. S.* 56. *Vide Copyhold,* (C. 10.)—*Deviſe,* (N. 7.)

Or, for the Life of another. *Lit. S.* 56.

Or, for the Life of himſelf and ſeveral others. *Co. L.* 41. *b. Mo.* 8.

So, if Tenant for Life, by Curteſy, or in Dower, grants his or her Eſtate over, the Grantee ſhall be Tenant *pur auter vie. Co. L.* 41. *b.*

So, if Lands are demiſed or granted to a Man, generally, and Livery made upon it. *Co. L.* 42. *a.*

And ſuch Demiſe or Grant to another, generally, by Tenant in Fee, ſhall be an Eſtate to the Leſſee for his own Life. *Co. L.* 42. *a.*

By Tenant in Tail, it ſhall be for the Life of the Leſſor: for that is all which he can lawfully grant. *Co. L.* 42. *a.*

So a Demiſe to another for a Time indeterminate, paſſes for Life, if Livery be made; or of Things which lie in Grant, without Livery: As, a Leaſe to a Man *quamdiu ſe bene geſſerit. Co. L.* 42. *a.*

To a Woman *durante Viduitate*; or, *dum ſola. Co. L.* 42. *a.*

To Huſband and Wife, during Coverture. *Co. L.* 42. *a.*

To *A.* as long as he inhabits. *Co. L.* 42. *a.*

Or, pays ſuch Rent. *Co. L.* 42. *a.*

Or, till he be preferred to ſuch a Benefice. *Co. L.* 42. *a.*

Or, till out of the Profits he has paid 100*l.* or other Sum. *Co. L.* 42. *a.*

Or, during his Exile, if he be abſent from his Country; tho' not by Edict, but voluntarily. *R.* 1 *Vent.* 326.

So, if the King grants Office at Will, and a Rent for it for his Life; he has an Eſtate for Life in the Rent, tho' it determines with the Office. *Co. L.* 42. *a.*

### (E. 2.) What Intereſt he has.

Tenant for Life has a Freehold, as well as Tenant in Fee, or Tail. *Co. L.* 43. *b.*

So his Life is greater than another's Life: and therefore, if he leaſes to him in Remainder or Reverſion for his Life; he ſhall have it after the Death of the Leſſee: for it was not a Surrender. *Co. L.* 42. *a.*

So, if Tenant for Life takes Huſband, and they leaſe to him in Reverſion or Remainder for the Life of the Huſband. *Co. L.* 42. *a.*

And upon ſuch Leaſe a Rent may be reſerved. *Co. L.* 42. *a.*

So, if Tenant for Life and he in Reverſion join in a Leaſe for Life, they may join in Waſt, and he for Life ſhall have *locum vaſtatum*, and he in Reverſion, Damages. *Co. L.* 42. *a.*

So, Joint-tenants the one for Life, the other in Fee. *Co. L.* 42. *a.*

So, if *A.* recovers Dower againſt Tenant for Life, he ſhall have the Land after the Death of *A. Co. L.* 42. *a.*

### (E. 3.) What Privileges he ſhall have.

Tenant for Life, or for Years, ſhall have Houſe-bote, Plough-bote, Hay-bote; *viz. Eſtoveria ædificandi, ardendi, arandi, et claudendi. Co. L.* 41. *b.*

And theſe reaſonable *Eſtovers* he ſhall have upon the Land demiſed, without Aſſignment; if he be not reſtrained. *Co. L.* 41. *b.*

So, if the Leſſor covenants that he ſhall take *Eſtovers* in a Wood not demiſed; he ſhall take in both. *R. Dal.* 4 *Mo.* 7.

If he demiſes a Manor, (except *Frith-Cloſe*,) and covenants that he ſhall take them *ſuper præmiſſa*; he ſhall not take them in *Frith-Cloſe*. *R.* 1 *Leo.* 117.

Otherwiſe, if the Demiſe was (except the Trees) and a Covenant ſo; he ſhall take the Trees excepted for *Eſtovers*. *R.* 1 *Leo.* 117.

Or, if it be averred, that there are no *Eſtovers* but in the Land excepted. *R. Cro. El.* 125.

If a Grant be to a Leſſee to take *Eſtovers* from Time to Time in a Cloſe not demiſed, without ſaying, for what Time; he ſhall take them during the Term. *R. Mo.* 7.

But the Leſſee cannot take Fire-bote except of Underwood. 3 *Leo.* 16.

Or, if Fire-bote be expreſly granted, and there be not ſufficient Underwood; he may take it of the great Trees. 3 *Leo.* 16.

*Eſtovers* may be claimed *in alieno Solo* by Grant, or by Preſcription.

If a Grant be to a Leſſee to take *Eſtovers*, he ſhall have them during his Term, and his Executor after him. *R. Dal.* 4.

If there be no Timber for Repairs, it ſhall be found by the Leſſor, if there be no Default in the Leſſee. *Per* 2 *J. Dal.* 4.

But a Grant of *Eſtovers* to *A.* gives him a Right only for his Life.

Tho' the Grant be to *A. pro Eaſiamento ipſius & hæredum*, and purſuant to a Covenant to convey to him and his Heirs. *R.* 1 *Leo.* 2.

*See further Vin. Waste M. & Estate B. b. 17.*

## (F) Occupant.

### (F. 1.) Who ſhall be.

If Tenant *pur auter vie* of Lands or Tenements dies before the *Ceſtuy que vie*, he who firſt enters and takes Poſſeſſion of the Land, ſhall have it during the Life of the *Ceſtuy que vie*, as Occupant. *Co. L.* 41. *b.*

And therefore, if any enters to the Uſe of another; he who enters ſhall be Occupant. *R.* 2 *Rol.* 151. *l.* 35.

If Tenant *pur auter vie* leaſes for Years, and dies before the *Ceſtuy que vie*; the Leſſee ſhall be Occupant, and his Leaſe ſhall be extinct. *Q. Dy.* 328. *b.* *R.* 2 *Rol.* 151. *l.* 22. 2 *Bul.* 11.

If ſuch Leſſee leaſes to *B.* at Will, *B.* being in Poſſeſſion ſhall be Occupant. *R.* 2 *Cro.* 554. *R.* 2 *Rol.* 151. *l.* 30. 2 *Bul.* 11.

Tho' *B.* claims nothing but as Tenant at Will. *R.* 2 *Bul.* 11. 2 *Rol.* 151. *l.* 30. 2 *Cro.* 554.

If Tenant *pur auter vie* leaſes to a *Feme Covert* at Will, her Huſband ſhall be Occupant. *Per Twiſden*, 1 *Sid.* 347.

If Leſſee at Will cuts down Trees, which is a Determination of the Will, yet he ſhall be Occupant. *Per Twiſden*, 1 *Sid.* 347.

So, if Tenant *pur auter vie* was diſſeiſed, and dies, the Diſſeiſor ſhall be Occupant. *Per Croke*, 2 *Bul.* 12. *D. Cont.* 2 *Leo.* 121.

If Tenant for Life levies a Fine to the Uſe of himſelf and *A.* and if *A.* dies in the Life of Tenant for Life, to *B*; *A.* dies in the Life-time of Tenant for Life; by Equity it goes to *B.* 2 *Cro.* 201.

But he, who claims to be Occupant, if he does not take actual Poſſeſſion, ſhall not be Occupant. *Vau.* 188. 1 *Sid.* 347. 3 *Leo.* 36.

So, if a Man goes croſs the Land, without other Intent, he ſhall not be Occupant. *D. Cart.* 61.

If at the Death of Tenant *pur auter vie*, his Wife and Son be upon the Tenements, they ſhall not be Occupants without more, for the Incertainty. *D. Cart.* 61.

So, if a Man makes a Leaſe in Truſt for himſelf for Life, and afterwards for his Wife, and enters, and dies; the Leſſee ſhall not be Occupant. *Vide* 1 *Sid.* 347.

So, if Tenant *pur auter vie* makes a Leaſe upon the ſame Truſt; the Leſſee ſhall not be Occupant, but the Wife, if ſhe enters. *R. per* 3 *J. Bridgman cont. and Affirmed in Error. Cart.* 57. 1 *Sid.* 347. 1 *Lev.* 202.

So, if a Leaſe be to *A.* and his Heirs *pur auter vie*, and *A.* dies; his Heir ſhall be Special Occupant. *Co. L.* 41. *b.* 2 *Rol.* 150. *l.* 15. 151. *l.* 40, 50. *D.* 10 *Co.* 98. *a.*

So, if Tenant *pur auter vie* grants a Leaſe to commence after his Death; the Leſſee may enter and have it during his Term, tho' a Stranger firſt entred. *Per* 2 *J. Cro. El.* 182. *Agreed* 1 *Lev.* 202.

But if a Leaſe be to *A.* his Executors or Aſſigns, *pur auter vie*; his Executor ſhall not have it as Special Occupant: for an Occupant has the Freehold, which an Executor cannot take. *Dy.* 328. *b.* *R.* 2 *Rol.* 152. *l.* 5. *Yel.* 9.

Nor his Adminiſtrator: for he is not an Aſſignee to ſuch Intent. *R. Cro. El.* 901. *Mo.* 664. *R. Yel.* 9.

Nor ſhall he be ſubject to Payment of Debts. 1 *Ver.* 234.

Yet by the *St.* 29 *Car.* 2. 3. If Tenant *pur auter vie* does not deviſe his Eſtate, and there be not a Special Occupant, it ſhall go to the Executors or Adminiſtrators of the Grantee, and be Aſſets in their Hands.

And this ought to be underſtood, *for want of Aſſets:* for the Executor ſhall not have it if he does not prove ſuch Want. *R.* 1 *Ver.* 234. for in it's nature it is an inheritable Eſtate and goes to the Heir. *Semb.* 2 *Ver.* 320.

And he who enters ſhall be Occupant; but *quoad* Creditors he is Executor *de ſon Tort. Carth.* 166.

## (F. 2.) Of what Things.

Occupancy ought to be of Things of which there may be an actual Poſſeſſion: As, of Land, or Sea. *Vau.* 188.

But there cannot be an Occupant of a Rent. *Co. L.* 41. *b.* *Cro. El.* 721, 901. *R. Mo.* 664. 2 *Rol.* 150. *l.* 48.

Nor, of a Thing, exiſting ſolely by Creation of Law: As, of an Advowſon, Common, Fair, Title, Dignity, *&c. Vau.* 190, 194.

Nor, of Tithes, *&c. Vau.* 201.

Nor, of an Uſe before the *St.* 27 *H.* 8. 10. 2 *Cro.* 201.

And Things, of which there cannot be an Occupant, determine by the Death of Tenant for Life. *Vau.* 201.

And if there be a Remainder limited upon his Eſtate, it commences immediately. *Per Poph. Mo.* 664.

So there cannot be an Occupant againſt the King. *Co. L.* 41. *b.* *Sav.* 62.

Yet an Occupant may take a Common, Advowſon, *&c.* as Appendant to Land which he occupies. *Vau.* 190, 196.

So, if a Leaſe be of Land and Tithes rendring Rent, the Occupant of the Land ſhall have the Tithes: for the Rent is increaſed in reſpect of it, tho' it wholly iſſues out of the Land. *Per Vaughan; But Judgment was againſt him. Vau.* 202.

An Occupant in the nature of the Thing has but a bare Poſſeſſion, which he may take, or leave, at his Pleaſure. *Vau.* 189.

And

And therefore, he cannot be subject to a Tenure, Condition, &c. *Vau.* 189.

But Civil Constitutions may subject him: and therefore, by the Common Law, the Freehold is cast upon the Occupant. *Vau.* 191, 195.

So an Occupant shall be subject to a Rent reserved upon the Lease *pur auter vie*. *Vau.* 190. *Co. L.* 41. *b.*

So, if Tenant *pur auter vie* leases for Years to one, who leases at Will; tho' the Lessee at Will be Occupant, yet the Lease for Years is not extinct. *R.* 2 *Bul.* 12. 2 *Rol.* 151. *l.* 30. 2 *Cro.* 554.

Or, if a Remainder was upon a Lease for Years, or the Lease was of Covin, &c. it shall not be extinct.

So an Occupant shall be subject to Wast. *Co. L.* 41. *b.* *Vau.* 190.

So, to a Forfeiture, Condition, &c. *Vau.* 190.

## (G) Tenant for Years.

### (G. 1.) By what Words a Lease shall be.

TENANT for Term of Years shall be, where a Man lets Lands to another for a Term of certain Years. *Lit. S.* 58.

The usual Words to make a Lease are, *demise, grant, to farm let*, &c. *Co. L.* 45. *b.*

So any Words, which amount to a Grant, are sufficient for a Lease. *Co. L.* 45. *b.*

As, if a Man *covenants, grants, and agrees, that B. shall have such Land for so many Years*, and *B. covenants to pay the Rent*; it is a good Lease for Years. *R. Mo.* 861. *Hob.* 35. *Win. Ent.* 119. *R.* 2 *Cro.* 92. *R.* 1 *Rol.* 847. *l.* 40. *R. Cro. Car.* 207. *Jon.* 231.

So, if he *covenants, that the Covenantee shall enjoy such Land for such a Time, rendring Rent*. *R.* 1 *Leo.* 136.

So, Articles, which say, *It is agreed that A. shall lease to B. for* 7 *Years, provided that B. shall render Rent amounting to the present Lease*; tho' it be covenanted to make a Lease according to the Agreement. *R.* 1 *Rol.* 847. *l.* 50. *Cro. El.* 486.

So, if a Man says, *you shall have a Lease of Land in D. for* 21 *Years at* 10 *l. per Annum, make a Lease in Writing, and I will seal it*; it will be a Lease by *Parol*, tho' not in Writing. *Cro. El* 33. *Mo.* 8.

But a Covenant, *that a Stranger shall enjoy such Land for so many Years at such a Rent*, does not amount to a Lease, but a Covenant. 1 *Leo.* 136.

So a Covenant, *that he shall permit the Covenantee himself to hold the Land for so many Years*, does not amount to a Lease: for it sounds only in Covenant. *R.* 1 *Rol.* 848. *l.* 5.

So, an Article, *that he is content A. shall have a Lease for* 6 *Years, that the Rent shall be* 10 *l.* &c. for it appears to be only Instructions for a Lease. *R.* 1 *Rol.* 848. *l.* 10.

So a Defeazance of a Recognizance, *that A. shall convey an Advowson to B. and that B. shall always quietly enjoy it*, does not amount to a present Lease. *R. Co. Ent.* 85. *a.*

So a Covenant *to levy a Fine, upon Condition, that if A. shall pay* 100 *l. within* 13 *Years to B. it shall be to the Use of A; and in the mean Time to the Use of B. and that B. shall enjoy it for* 13 *Years*, does not amount to a Lease to *B.* if the Fine be not levied. *R.* 2 *Cro.* 172. 1 *Rol.* 847. *U.*

*Ke further as to what shall be only a chattel interest in land. Co Litt. 42. b. 43. b. 44. Fin. Abr. 295. 1. Ves. 144.*

(G. 2.) By

## (G. 2.) By what Perſons.

Tenant in Fee Simple may make Leaſes, without Limitation, or Reſtraint.

So Tenant in Tail may make a Leaſe for his own Life.

And now, by the *St.* 32 *H.* 8. 28. he may make Leaſes for 3 Lives, or 21 Years. *Vide Ante*, (B. 32.)—*Poſt*, (G. 4, 5.)

So, *by the ſame St.* Huſband and Wife may make Leaſes for 3 Lives, or 21 Years, *&c. Vide Baron and Feme*, (G. 3.)

(G. 3.) By Spiritual Perſons, &c. At Common Law.

So, by the Common Law, Spiritual or Eccleſiaſtical Corporations might make Leaſes for Lives, or Years, without Limitation, or Reſtraint, *concurrentibus iis quæ in jure requiruntur. Co. L.* 44. *a.* 2 *Inſt.* 457.

So, a Maſter and Fellows of a College, Hoſpital, *&c. Co. L.* 44. *a.*

An Archbiſhop, or Biſhop might make a Leaſe, with the Confirmation of the Dean and Chapter. *Co. L.* 44. *a.* 10 *Co.* 60. *a.* 2 *Lev.* 137.

So a Dean and Chapter, by common Conſent under their common Seal.

So a Prebendary, with the Aſſent of Biſhop, Dean, and Chapter. 2 *And.* 168.

And the Biſhop, and Dean and Chapter may confirm, by ſeveral Deeds. *R.* 1 *And.* 47.

So, a Parſon, or Vicar of a Church, with the Conſent of Patron and Ordinary. *Co. L.* 44. *a.* 2 *Lev.* 61.

Tho' the Leaſe was to commence after his Death, it would be good againſt the Succeſſor. *Dy.* 69. *a. Hob.* 7.

So a Leaſe by a Parſon, or Vicar before the *St.* 13 *El.* 10. was good, being confirmed; tho' the Confirmation was after the Statute. *R. Cro. El.* 18. *Vide Poſt*, (G. 5.)

But a Leaſe by an Eccleſiaſtical Perſon, before he was intitled to Poſſeſſion, was void: As, if the King appropriated a Church, in the Life of the Incumbent, to a Biſhop, *&c.* and the Biſhop made a Leaſe for 40 Years to commence after the Death of the Incumbent; it would be void: for he had nothing in the Life-time of the Incumbent. *R. Dy.* 244.

So a Leaſe by a Parſon, Provoſt, *&c.* not confirmed, was void by his Death. *Dy.* 239. *b.* 2 *H.* 4. 5. *a.*

Or, confirmed by Patron and Ordinary, but not by the Grantee of the next Avoidance. *Jon.* 454.

And tho' the Grantee preſents, and his Preſentee does not avoid the Leaſe; the Patron in Fee may afterwards avoid it, tho' he confirmed it: for being once void, it ſhall not afterwards be good. *R. Jon.* 454.

(G. 4.) By the *St.* 32 *H.* 8. 28. 1 *El.* 19. & 13 *El.* 10.

So, by the *St.* 32 *H.* 8. 28. All Leaſes of any Hereditaments by Indenture under Seal, for Term of Years, or Life, by any Perſon having an Eſtate of Inheritance in Right of their Churches, ſhall be good againſt them and their Succeſſors, in the ſame manner as if ſeiſed in Fee.

Provided, not to extend to Leaſes of Lands in Farm by Virtue of any old Leaſe, unleſs ſuch old Leaſe be expired, ſurrendred, or ended within one Year after making of a new Leaſe; Nor to a Grant of any Reverſion of Lands, *&c.* Nor to a Leaſe of Lands not moſt commonly letten by the Space of 20 Years before; Nor to a Leaſe without Impeachment of Waſt; Nor to a Leaſe above 21 Years or 3 Lives from the Day of the making; And that on ſuch Leaſe be reſerved the moſt accuſtomable Rent paid for the ſame within 20 Years next before.

Provided, not to give Power to any Parſon, or Vicar, to leaſe Lands, &c. of their Churches, otherwiſe than before.

By the *St.* 1 *El.* 19. All Eſtates made by any Archbiſhop, or Biſhop, (to any but the Queen, and by the *St.* 1 *Jac.* 3. Eſtates to the Crown,) and by the *St.* 13 *El.* 10. Eſtates, Leaſes, &c. by the Maſter and Fellows of any College, Dean and Chapter, Maſter or Guardian of an Hoſpital, Parſon, Vicar, or any having any Spiritual or Eccleſiaſtical Living, of any Lands belonging to their College, Church, &c. ſhall be void, other than Leaſes for 21 Years or 3 Lives from the Time ſuch Leaſes ſhall be made, whereon the accuſtomed yearly Rent ſhall be reſerved payable during the ſaid Term.

Provided, not to make good any Leaſe, or Grant, by any College or Collegiate Church, for more Years than warranted by their private Statutes.

Provided, not to extend to any Leaſe or Surrender of a former Leaſe, or by Force of a Covenant in a former Leaſe then continuing; ſo that the new Leaſe do not contain more Years nor leſs Rent than the former.

And by the *St.* 14 *El.* 11. The *St.* 13 *El.* 10. does not extend to Leaſes of Houſes in any City, Borough, Town-Corporate or Market-Town, or the Suburbs thereof, made as by the Law before, and the private Statutes of any College, &c. they might have been made; ſo as ſuch Houſes be not the Capital or Dwelling Houſe, and have not above 10 Acres of Land; And ſo as the Leaſe be not made in Reverſion, and reſerve the accuſtomed yearly Rent, and charge the Leſſee with Reparation, and be not made longer than for 40 Years.

Nor to Alienations, when before, with, or preſently after, Aſſurance be made to ſuch Colleges and their Succeſſors, &c. in Fee abſolutely of Lands, &c. of as good Value, and as great yearly Rent.

So, by the *St.* 18 *El.* 11. The Leaſes upon the *St.* 13 *El.* 10. ſhall be void, if Leaſes of Lands, &c. whereof any former Leaſe is in being, not to be ſurrendred or ended in 3 Years next after making ſuch new Leaſe.

So, by the *St.* 18 *El.* 11. Bonds, Covenants, &c. to make or renew Leaſes contrary to this Act, and the *St.* 13 *El.* 10. are void.

By the *St.* 13 *El.* 20. No Leaſe of any Benefice, or Eccleſiaſtical Promotion with Cure, ſhall be good, longer than the Leſſor is reſident, ſerving the Cure, without Abſence above 80 Days in one Year.

Provided, that a Parſon, having 2 Benefices, may demiſe that on which he is not reſident to his Curate who ſhall ſerve the Cure; but ſuch Leaſe ſhall endure no longer than the Curate's Reſidence, without Abſence above 40 Days in any one Year.

And by the *St.* 14 *El.* 11. Leaſes by Curates ſhall be of no better Force, than if made by him for whom he ſerves the Cure.

And therefore now, all Perſons ſeiſed in right of their Church are enabled to make Leaſes for 3 Lives, or 21 Years, obſerving the Directions of the *St.* 32 *H.* 8. and the Reſtrictions of 1 & 13 *El. Co. L.* 44. *a.*

So, a Biſhop ſeiſed in right of his Biſhoprick. *Co. L.* 44. *b.*

A Dean, Archdeacon, or Prebendary, &c. ſeiſed of ſole Poſſeſſions in right of his Deanery, &c. for they are all ſeiſed *jure Eccleſiæ*. *Co. L.* 44. *b.* *R. Cro. El.* 350. 4 *Leo.* 51.

So, a Chancellor of a Church, Treaſurer, Præcentor. *R.* 1 *Lev.* 112.

But a Parſon, or Vicar are not enabled by the *St.* 32 *H.* 8. Yet they are reſtrained by the *St.* 13 *El.* 10. to make Leaſes above 3 Lives, or 21 Years. *Co. L.* 44. *b.*

By

By the *St.* 32 *H.* 8. 28. Perſons ſeiſed of an Eſtate of Inheritance in Right of their Churches, may leaſe all Manors, Lands, Tenements, or other Hereditaments, whereof they are ſo ſeiſed.

(G. 5.) What Leaſes are warranted by thoſe Statutes, and what not. *Vide Baron and Feme,* (G. 3.—K.) *Vide Ante,* (B. 32.)

And this extends to all Perſons ſeiſed in Fee in Right of their Church: As, to a Chancellor of a Cathedral Church. *R.* 1 *Lev.* 112.

To a Prebendary, Treaſurer, *&c.* 1 *Lev.* 112. *R. Cro. El.* 350. 4 *Leo.* 51.

A Dean, Archdeacon, and all others ſeiſed in Right of the Church, except a Parſon, and Vicar.

But a Leaſe, Grant, Eſtate, *&c.* is void by the *St.* 1 *El.* 19. and 13 *El.* 10. made of any Manors, Lands, *&c.* or other Hereditaments, being Parcel of the Poſſeſſions of ſuch Biſhoprick, College, *&c.* (or belonging to the ſame, by the *St.* 1 *El.*)

And theſe Words ſhall be underſtood of Poſſeſſions, *&c.* concerning the Biſhoprick. 10 *Co.* 61. *a.*

And therefore, if a Biſhop grants a Rent-charge, it does not bind his Succeſſor. 5 *Co.* 15. *a.*

Or, grants an Annuity; tho' it is perſonal: for it is a Charge in reſpect of the Biſhoprick, and his Succeſſor would be charged. 5 *Co.* 14. *b.* *R.* 10 *Co.* 61. *b.* *Bridg.* 31.

Or, ſuffers a Recovery againſt him in a Writ of Annuity, by Verdict or Confeſſion. 10 *Co.* 61. *a.*

Or, makes any Charge or Incumbrance. 10 *Co.* 60. *b.*

Or, makes a Confirmation of a Leaſe by his Leſſee. 5 *Co.* 15. *a.*

So, if he grants the next Avoidance. *R.* 10 *Co.* 60. *b.* *Cro. Car.* 259. *R. Cro. El.* 440. 5 *Co.* 15. *a.* 1 *And.* 244.

Or, makes a Diſpoſition of any Thing in his Power, except by Leaſe for Lives, or Years, not reſtrained. 10 *Co.* 60. *b.*

Or, permits an Uſurpation upon a Church which belongs to him. *R. Jon.* 46.

So, if he grants new Offices, which are not of Neceſſity, *&c.* *R.* 1 *And.* 244.

Or, an antient Office with a new Fee. *R. per* 3 *J.* *Cro. Car.* 49.

Or, an antient Fee, *una cum* 3*l. per Annum*: for the Grant is intire; and therefore, being with a new Fee, it is void. *Dub. Cro. Car.* 48. *Semb.* that it is void only for the new Fee. *Bridg.* 32. *Ley* 71. *Vide infra.*

So, if he grants an antient Office to 2, where it was uſually granted only to one. *R.* 10 *Co.* 61. *R. Cro. Car.* 259. *R. Jon.* 264.

Or, grants in Reverſion, an Office granted only in Poſſeſſion. *R.* 10 *Co.* 61. *R. Cro. Car.* 259. *R. Jon.* 264.

So, if the Grant be of Things in Grant, out of which a Rent cannot be reſerved: As, of an Advowſon, Fair, Franchiſes, *&c.* *Co. L.* 44. *b.* 10 *Co.* 60. *b.* *R.* 5 *Co.* 3. *D. Bridg.* 30.

Yet a Grant of Offices of Neceſſity, confirmed by the Dean and Chapter, *&c.* is not reſtrained by the *St.* 1 *El.* or 13 *El.* if it be with the antient Fee: becauſe there is no Diminution of the Revenue; and it is therefore good againſt the Succeſſor. *R.* 10 *Co.* 61.

So a Grant of a new Office of Neceſſity, with a reaſonable Fee, being confirmed by the Dean and Chapter, is not reſtrained; and the Reaſonableneſs of the Fee ſhall be adjudged by the Court: As, the Office of Keeper of his Houſe and Gardens, with a Fee of 3*l.* *R. Cro. Car.* 48. 10 *Co.* 61. *b.* *Bridg.* 31.

The Office of Parker, and Steward. *R. Cro. Car.* 48. *Bridg.* 29. *Ley* 71.

The Office of Commiſſary, or Official. *R. Jon.* 264. *Cro. Car.* 258.

So

So a Grant of the Office of Regiſter by the Biſhop of *Briſtol*, *&c.* newly founded, as well as by an antient Biſhoprick, if it was uſually granted before the *St.* 13 *El.* 10. *R.* 2 *Lev.* 137.

So, a Grant of an antient Office with an antient Fee, if by another Grant a new Fee be alſo added, it is void only as to the new Fee. *Vide ſupra.*

So a Grant in Reverſion is good, where antient Grants have been in Reverſion. *Cro. Car.* 259.

Or a Grant to 2, where antient Grants were ſo; tho' they were not of late Time. 4 *Mod.* 17.

And Uſage ſince the Statute is Evidence of antient Uſage at the Time of the Statute. *R.* 4 *Mod.* 17.

So, a Confirmation of a Leaſe after 13 *El.* if the Leaſe was made before the *St.* 13 *El.* 10. 5 *Co.* 15. *Vide Ante*, (G. 3.)

So a Leaſe by a Biſhop, as Truſtee for a Charity, is good againſt his Succeſſor; tho' it be not conformable to the Statute. *Duke* 139.

A Leaſe within this Statute ought to be by Indenture; and not by Deed Poll, or *Parol.* *Co. L.* 44. *a.*

So it ought to commence from the making. *Co. L.* 44. *a.* *Mo.* 253. *Vide Poſt*, (G. 8, 9.)

Or, from the Day of the making. *Vide the St.* 13 *El.* 10. *Co. L.* 44. *a.* *Cont. Co. L.* 45. *a.*

Or, *a Datu*; for, that ſhall be conſtrued to be *from the Delivery*, *ut res magis valeat.* *R. per* 3 *J. Treby cont.* 3 *Lev.* 439. *Semb. Mo.* 107.

And therefore, to commence at a future Day, is void. 1 *Leo.* 36. 3 *Leo.* 131.

So it ought not to exceed 3 Lives, or 21 Years. *Co. L.* 44. *b.*

And therefore, if it be for 4 Lives, it ſhall be void; tho' one of them dies in the Life of the Leſſor. 10 *Co.* 62.

So, if it be for 3 Lives and 21 Years alſo, both together: for the Statute ſpeaks in the Disjunctive. *Co. L.* 44. *b.* *R.* 5 *Co.* 2. *Mo.* 253. *R. Cr. El.* 141.

But a Leaſe for 3 Lives, tho' the Leſſee is not one of them, ſhall be good. *R.* 6 *Co.* 37. *b.* 2 *Cro.* 76.

So a Leaſe for one, or 2 Lives, or for leſs than 21 Years. *Co. L.* 44. *b.* *R.* 1 *Leo.* 306.

Or, for 10 Years, and afterwards for 11 Years. 1 *Leo.* 148.

Or, for 20 Years from *Michaelmas* next. 1 *Leo.* 148.

So a Leaſe for 20 Years, and another for 20 Years after the End of the former, is good within the *St.* 14 *El. Poph.* 9. *Cont. Semb.* 3 *Keb.* 196.

So it ſhall not be, without Impeachment of Waſt. *Co. L.* 44. *b.*

And therefore, a Leaſe to one for Life, Remainder to another for Life, is not good: becauſe Waſt cannot be puniſhed. *Co. L.* 44. *b.* *Mo.* 387.

So a concurrent Leaſe for Life ſhall be void, tho' it be confirmed by the Dean and Chapter, *&c.* for the former would be diſpuniſhable for Waſt. *Co. L.* 45. *a.*

But a Leaſe for 3 Lives is good: for the Occupant ſhall be puniſhable for Waſt. *Co. L.* 44. *b.*

So it ought to be of Lands moſt uſually demiſed, or occupied by the Farmers of it, for 20 Years next before. *Co. L.* 44. *b.*

And the Demiſe ought to be by him who has the Inheritance: for a Demiſe by Tenant by the Curteſy, or in Dower, or Guardian in *Chivalry*, *&c.* is not ſufficient. *Co. L.* 44. *b.*

But it is ſufficient, if the Land has been uſually demiſed, *or* occupied by Farmers within 20 Years, in the Disjunctive: and therefore, if Land antiently demiſed, be purchaſed by a Biſhop, and manured 15 Years in his Hands,

Hands, it may be afterwards demiſed. *R. per* 2 *J.* 1 *Sid.* 316, 416. 1 *Lev.* 213. *but* 2 *J. Cont. there. Ray.* 165.

So a Demiſe by Will, or a Grant by Copy, is ſufficient, if it be for 11 Years or more, at one or ſeveral Times. *Co. L.* 44. *b.* *R.* 6 *Co.* 37. 2 *Cro.* 76. *R. Mo.* 759.

And the moſt accuſtomable Rent, paid for 20 Years next before, ought to be reſerved annually during the Term. *Co. L.* 44. *b.*

And therefore, a Leaſe of a Thing, out of which Rent cannot be reſerved, ſhall be void againſt the Succeſſor: As, a Leaſe of a Fair, Franchiſe, or other Thing not manurable. *R.* 5 *Co.* 3. *a.* 2 *Cro.* 111.

Or, of Tithes, *&c.* *R. per* 3 *J. Mo.* 778. *R.* 2 *Cro.* 173. 112.

Tho' the antient Rent be reſerved: for it is not incident to the Reverſion, tho' it be good by Way of a Contract. *R.* 5 *Co.* 3. *a.*

Yet if the Demiſe was for Years, for which the Succeſſor may have Remedy for the Rent in reſpect of the Contract, it may be good. *R.* 2 *Cro.* 112. *D.* 2 *Sand.* 304. *Per Hale, Hard.* 326.

So a Leaſe is not good, where Part of the Lands never were demiſed: for then the antient Rent cannot be reſerved. *Mo.* 199.

So a Leaſe is not good, which reſerves the Rent in *Silver*, which was before in *Gold*: for it is not the accuſtomable Rent. *R.* 5 *Co.* 5. *b.*

Or, reſerves the antient Rent *pro ratâ.* 5 *Co.* 5. *b.*

Or, joins 2 Farms, and reſerves the Rent of both together. 5 *Co.* 5. *b.*

Or, if two Farms were antiently demiſed, and the Demiſe is of one, rendring the antient Rent, without ſaying, what Rent. *R. Cro. Car.* 95.

Or, if a Copyhold be purchaſed in, and the antient Rent is augmented *pro ratâ.* *R.* 5 *Co.* 5. *b.* *Mo.* 199.

Or, if two Acres, with other Lands, are demiſed, and the antient Rent of the 2 Acres be reſerved for the Whole. *R.* 2 *Jon.* 111.

Or, if 2 Acres are demiſed, without an Exception of Trees, which uſually were excepted, reſerving the ſame Rent. *R.* 2 *Cro.* 458.

So, by *St.* 18 *El.* 6. No Maſter, Provoſt, *&c.* of any College, *&c.* in any of the Univerſities, *Wincheſter*, or *Eaton*, ſhall leaſe any the Lands, *&c.* to which any Tithes, Arable Land, Meadow, or Paſture belong, unleſs a 3d of the old Rent be reſerved in Corn, *&c.*

The Rent reſerved upon the laſt Leaſe is the accuſtomed Rent. *Hard.* 326.

If there be a Covenant to pay, which is effectual, it is tantamount to a Reſervation. *Hard.* 326.

But if a Copyhold eſcheats, or is forfeited, it may be demiſed with the Manor rendring the antient Rent, with an Augmentation *pro ratâ.* 5 *Co.* 5. *b.* *Mo.* 199, 759.

Or a Partition be made, and the Rent of each Part be reſerved *pro ratâ.* *Co. L.* 44. *b.*

So it ſhall be good if the Rent be reſerved yearly or half-yearly, where it was before quarterly. *Semb. cont.* 5 *Co.* 5. *b.* *R. acc.* 6 *Co.* 38. *a.* 2 *Cro.* 76. *R. Cro. Car.* 17. *Co. L.* 44. *b.*

Or, if he reſerves 8 Buſhels of Corn, where it was before one Quarter, 5 *Co.* 5. *b.*

So, if he reſerves the antient yearly Rent; tho' an Heriot, Fine upon the Death of the Tenant, or other Profit or Caſualty, not annual, be not reſerved; for the Statute ſpeaks only of *yearly Rent.* *Co. L.* 44. *b.* *R.* 6 *Co.* 38. 2 *Cro.* 76. *R. Mo.* 759.

So, if he reſerves the antient Rent, tho' Part of the Lands antiently demiſed for it be excepted. *R. per* 3 *J.* 2 *cont. and afterwards Affirm'd in B. R.* 1 *Mod.* 203. 2 *Mod.* 57.

If reſerved at the antient Days of Payment, or 20 Days after: for that is for the Benefit of the Succeſſor. *R.* 2 *Lev.* 62.

So a Leaſe by a College is not void by the *St.* 18 *El.* 6. tho' no Rent be reſerved in Corn, where Land, Meadow, Paſture, or Tithes of Corn are not part of the Demiſe. *R. Sav.* 68.

So it ſhall not be intended, that it is not the antient Rent, if it be not ſpecially found. *R.* 1 *Leo.* 306.

And it need not be ſhewn, that the 3d Part of the Rent was reſerved in Corn, according to 18 *El.* 6. *R.* 1 *Leo.* 306.

So a Leaſe by the *St.* 32 *H.* 8. 28. is not enabled to be made of a Reverſion, nor if a former Leaſe be *in Eſſe*, not ſurrendred or determined within a Year after the new Leaſe. *Co. L.* 44. *b.*

And ſuch Surrender ought to be abſolute, and not conditional. *Co. L.* 44. *b.* *R.* 5 *Co.* 2. *b.*

So a Leaſe of a Reverſion, *in futuro*, or concurrent, cannot be made within the 14 *El.* 11. for they are all Leaſes in Reverſion. *R. Cart.* 14, 15. *R. Hob.* 269. *R. Cro. El.* 473, 564. *Cont.* as to a concurrent Leaſe within 3 Years of the former Leaſe expired, *Per Hale.* *But R. acc.* as to a Leaſe *in futuro.* 3 *Keb.* 46, 107, 193. 2 *Lev.* 61, 2.

But a Biſhop may make a concurrent Leaſe for 21 Years, if it be confirmed by the Dean and Chapter, tho' there be a former Leaſe *in Eſſe*, not determined within a Year: for the *St.* 1 *El.* does not reſtrain Leaſes, which do not exceed 3 Lives or 21 Years; and therefore, if it has the Circumſtances required by the Common Law, the Leaſe ſhall be good, tho' it be not enabled by the *St.* 32 *H.* 8. *Co. L.* 45. *a.* *R. per* 10 *J. Mo.* 108. 1 *La.* 148. And this, ſince the 18 *El.* 11. for a Biſhop is not there mentioned. *Cart.* 14.

Tho' the former Leaſe has 4, or more Years to come. *Mo.* 108.

So a Maſter and Fellows of a College, Dean and Chapter, *&c.* all reſtrained by the *St.* 13 *El.* may make a concurrent Leaſe (*concurrentibus iis quæ in jure requiruntur*) for Years, tho' the former Leaſe be not determined within a Year; ſo that, ſince the *St.* 18 *El.* 11. it be to be ſurrendred or determined within 3 Years. *Co. L.* 45. *a.*

So every Leaſe, not enabled by the *St.* 32 *H.* 8. nor reſtrained by the *St.* 1 *El.* or 13 *El.* ought to be made with the Circumſtances and Conſent required by the Common Law. *Co. L.* 45. *a.*

So a Leaſe of a Houſe in a City, *&c.* not enabled by the *St.* 14 *El.* 11. ſhall be good, if it be not within the Reſtriction of the 13 *El.* and 18 *El.* *Semb. Cart.* 15.

So a Leaſe of a Houſe in a City, *&c.* purſuant to the *St.* 14 *El.* is not within the *St.* 13 *El.* or 18 *El.* *R. Hob.* 269.

So a Leaſe by a Biſhop, or other Spiritual Corporation Sole, ſhall be good againſt himſelf, tho' he does not purſue the Directions of the Statutes, tho' the Statute ſays, that it ſhall be *void to all Intents, &c.* *Co. L.* 45. *a.* *R.* 3 *Co.* 59. *b.* *R.* 1 *And.* 244.

So a Leaſe by a Corporation Aggregate, not purſuant, ſhall be good againſt them during the Life of the Dean, or other Head of the Corporation. *Co. L.* 45. *a.* *R.* 3 *Co.* 60. *a.* *R. Mo.* 875. *R.* 1 *Leo.* 308.

But it ſhall be void immediately upon the Death or Removal, *&c.* of the Biſhop, Dean, or other Head. *R.* 10 *Co.* 62. *a.*

And the Acceptance of Rent by the Succeſſor, does not make it good for his Time. *Cont.* 1 *Rol.* 476. *l.* 15. *Dub. Cro. Car.* 95. *R. acc.* 2 *Cro.* 173. *Dub. Cart.* 16.

So

So a Leaſe by a Corporation Aggregate, which has not an Head, ſhall be void as to themſelves. *Hard.* 326.

(G. 6.) A Leaſe by ſeveral Perſons; How it operates.

If Parceners or Joint-tenants join in a Leaſe, this ſhall be but one Leaſe: for they have but one Freehold. 2 *Rol.* 64. *l.* 20.

If Tenants in Common join in a Leaſe, it ſhall be ſeveral Leaſes of their ſeveral Intereſts. 2 *Rol.* 64. *l.* 15.

So, if *A.* the Owner of the Land and a Stranger join in a Leaſe by Indenture; it ſhall be the Leaſe of *A.* only, and the Confirmation of the Stranger. *Co. L.* 45. *a.*

So, if *A.* and *B.* join in a Leaſe of their ſeveral Lands; it ſhall be ſeveral Leaſes of their ſeveral Eſtates, and a Confirmation by each of the Leaſe of the other. *Co. L.* 45. *a.*

So, if Tenant for Life, and he in Remainder or Reverſion in Fee, join in a Leaſe; it ſhall be the Leaſe of Tenant for Life during his Life, and the Confirmation of him in Remainder or Reverſion; and after the Death of Tenant for Life, it ſhall be the Leaſe of him in Remainder or Reverſion. *Co. L.* 45. *a.*

So, if Tenant *pur auter vie*, and he in Remainder or Reverſion join; it ſhall be the Leaſe of the Tenant for Life during the Life of *Ceſtuy que vie*, and afterwards the Leaſe of him in Reverſion or Remainder, and the Confirmation of Tenant for Life. *Co. L.* 45. *a.*

(G. 7.) A Leaſe by *Eſtoppel*, &c. *Vide Eſtoppel.*

So, if a Stranger makes a Leaſe by Indenture, it ſhall be good againſt himſelf by *Eſtoppel*: for he cannot ſay, *Nil habet in tenementis. Co. L.* 45. *a.*

So, if *A.* who has Right in Land, and a Stranger join in a Leaſe; it ſhall be good againſt the Stranger, by *Eſtoppel. Co. L.* 45. *a.*

So a Leaſe by Indenture, or Fine, ſhall be good by *Eſtoppel*, tho' there was another Leaſe *in Eſſe* for the ſame Time. *Pl. Com.* 434.

So Leaſe for Years may be good by *Eſtoppel*, for Part of the Years, for which there is a former Leaſe *in Eſſe*; and for the Reſidue it ſhall be good in Point of Intereſt. *R.* 1 *Sal.* 275.

If *A.* by Indenture leaſes for Years the Land of *B.* and afterwards purchaſes the Land, the Leaſe ſhall be good againſt his Heir by *Eſtoppel. Mo.* 20.

So a Leaſe ſhall be good of Land in Poſſeſſion.

Or, in Reverſion, after an Eſtate for Life, Years, or an Eſtate Tail in Poſſeſſion.

So a Leaſe to *A.* for 21 Years, and the ſame Day another Leaſe of the Reverſion for 21 Years, is good. *Pl. Com.* 432. *b.*

So a Leaſe of Land in Poſſeſſion, to commence after a Leaſe to *A. Pl. Com.* 432. *b.*

So *A.* ſeiſed in Fee may make a Leaſe to commence after his Death. *Skin.* 543.

So a Leaſe for Years may be aſſigned for Part of the Years. *Skin.* 543.

But a Leſſee for Years cannot aſſign his Term to commence after his Death: for he has only a Poſſibility. *Skin.* 543.

## (G. 8.) When a Leaſe ſhall commence.

Every Leaſe for Years ought to have a certain Commencement, and a certain End: And therefore, if it be limited to commence *from the Day of the Date*, the Day after the Date the Leaſe begins. *Co. L.* 46. *b. R.* 2 *Rol.* 387.

So, generally, if it be *a Datu*: for, *a Datu*, and, *a Die Datûs*, are tantamount. *Co. L.* 46. *b.* *R.* 2 *Rol.* 520. *l.* 37. *R. cont.* 2 *Cro.* 135. *R. acc.* 3 *Bul.* 203.

But when a Leaſe would otherwiſe be void, *a Datu*, ſhall be conſtrued, *from the Delivery*. *R. per* 3 *J. Treby cont.* 3 *Lev.* 439. *Sal.* 413.

So, if a Leaſe be made to commence *from the Date*, when it has none, or an impoſſible Date; it commences upon the Day of the Delivery. *Co. L.* 46. *b.*

So, if it be made to commence from a former Leaſe, when there is no ſuch Leaſe, or ſuch Leaſe is void, or expired, or miſrecited in a material Point; it commences from the Delivery. *Co. L.* 46. *b.* *R. Jon.* 355.

So, if a Leaſe be made for 21 Years, without ſaying, when it ſhall commence; it commences upon the Day of the Delivery. *Co. L.* 46. *b.*

So, if it be made to commence *from the Making*. *Co. L.* 46. *b.* 2 *Rol.* 520. *l.* 34.

Or, *from henceforth*. *Co. L.* 46. *b.*

Or, *from the Sealing and Delivery*. 2 *Rol.* 520. *l.* 30.

But if it be *a Die Confectionis*, it commences the Day after the Delivery. *Co. L.* 46. *b.*

So, if a Leaſe be the 25th of *March*, to commence *abinde* for one Year, rendring Rent at *Michaelmas* and *Lady Day*; *abinde* ſhall be taken excluſive of the Day of the Date: otherwiſe, the Reſervation would be after the Term. *R.* 2 *Rol.* 521. *l.* 10.

## (G. 9.) What ſhall be a good Commencement.

The Commencement of every Leaſe ought to be fixed and determined by expreſs Words, or ſuch as may be aſcertained by Conſtruction of Law, or by Reference to a Certainty. *Co. L.* 45. *b.*

And therefore, if a Leaſe mentions a Time of Commencement at a Day future or paſt, it ſhall be good.

So, if it mentions no Time of Commencement: for by Conſtruction of Law it commences at the Delivery. *Vide Ante*, (G. 8.)

So, if a Termor leaſes for a leſs Term, to commence after his Death; it ſhall be a good Leaſe of ſo many Years as remain, after his Death, of the firſt Term. *Per Holt*, *Sal.* 413.

So, if it be limited to commence upon a poſſible Contingency; As, *when A. pays* 20*s.* *Co. L.* 45. *b.* 6 *Co.* 35.

*Cum poſt Mortem, ſive per Mortem, Surſum-Redditionem, ſeu Foriſfacturam* of a former Leaſe for Years with a Proviſo that the Leſſor might enter if the Leſſees died within the Term, *vacari contingat*: for it commences at the End of the former Term. *R. per* 3 *J.* 2 *Cont.* 2 *Cro.* 71. 6 *Co.* 36.

So, if it be to commence upon a Disjunctive; it ſhall commence if the one Part happens, tho' the other does not. *Semb.* 3 *Lev.* 99.

So, if it commences upon the Death of ſuch an one without Iſſue. *R.* 1 *Lev.* 35.

So, if the Commencement be defeated by any Impediment, it may commence after the Impediment removed: As, if a Man leaſes to *A.* for 21 Years, and afterwards to *B.* the ſame Day by *Parol* for 31 Years; it ſhall not commence immediately, becauſe he had not Power to leaſe during the 21 Years before granted, but as a Reverſion; yet it ſhall commence after the End of 21 Years, for 10 Years. *Pl. Com.* 432.

## (G. 10.) What ſhall be a good Determination.

The Continuance of a Leaſe ought to be certain.

And it ſhall be certain, where the expreſs Number of Years is named, or by Reference, or Matter *ex poſt facto*, or Conſtruction of Law, the Years may be reduced to a Certainty. 6 *Co.* 35. *a.*

As, if the Limitation be expreſs, for 10, 20, or other Number of Years. 6 *Co.* 35. *a.*

Or, *for ſo many Years as A. has in ſuch a Manor*, who has in it 10 Years. 6 *Co.* 35. *b.*

*As A. ſhall name*, and he names in the Life of the Leſſor. 6 *Co.* 35. *b.*

## (G. 11.) When it ſhall be determined.

If a Leaſe be to *A. B.* and *C.* for Years, *if the ſaid A. B. and C. ſo long live*; if any of them dies, the Leaſe determines. *Per* 2 *J. Dal.* 2.

Otherwiſe, if it be in the Disjunctive, *if A. B.* or *C. ſo long live*; for then it continues during the Life of the Survivor.

Or, *if A. and B. or any Iſſue of them ſo long live. R. Cro. El.* 270. (*Vide Co. L.* 225. *a.*)

So, if a Leaſe be for Years, Proviſo *that the Leſſor may enter if the Leſſees die within the Term*; it does not ceaſe by the Death of the Leſſees, till the Leſſor enters. *R.* 2 *Cro.* 71.

So, if a Leaſe be *for* 21 *Years, and after the* 21 *Years ended for other* 21 *Years, and ſo from* 21 *Years to* 21 *Years till* 99 *Years are thence compleat*; the Leſſee ſhall have it for 99 Years after the firſt 21 Years. *R.* 2 *Lev.* 241.

So, if a Leaſe be to *A.* for one Year, *& ſic de Anno in Annum*, it ſhall be a Leaſe only for 2 Years. *Mo.* 372.

## (G. 12.) What ſhall not be a good Determination.

But it ſhall not be a good Limitation of the Determination of a Leaſe, if the Reference be to a Thing poſſible, or caſual, which has not expreſs Certainty: As, *for ſo many Years as an Infant* en ventre ſa mere *ſhall live. Semb.* 6 *Co.* 35. *b.*

Or, *for ſo many Years as till Iſſue* en ventre ſa mere *ſhall come to full Age.* 6 *Co.* 35. *b.*

So, if a Leaſe be *till* 20 *l. be received out of the Profits of Land*, which is 20 *s.* a Year. 6 *Co.* 35. *b.*

## (G. 13.) When a Leaſe ſhall be void.

But a Leaſe, which cannot take Effect in Intereſt except by Poſſibility, if it be not an *Eſtoppel*, ſhall be void: As, if Tenant in Fee leaſes by *Parol* to *A.* for 9 Years, and the ſame Day to *B.* for 9 Years, the Leaſe to *B.* ſhall be void. *Pl. Com.* 432.

But a Leaſe by a Biſhop, *&c.* confirmed by Dean and Chapter, ſhall not be void by his Death, tho' it be not purſuant to the *St.* 32 *H.* 8.

Nor, a Leaſe by a Parſon, or Vicar, if it be confirmed by Patron and Ordinary. *R.* 2 *Lev.* 61.

So, a Leaſe to *A.* for 3 Lives, if the Leſſor demiſes to *B.* for Life, *which Term ſhall commence after the Death, Surrender, or Forfeiture of the* 3 *Lives*, it ſhall be good, and the Words *which Term, &c.* rejected. *R. Cro. El.* 269.

## (G. 14.) What Intereſt the Leſſee has before Entry.

If a Leaſe be made to commence immediately, the Leſſee has in him *Intereſſe Termini* before his Entry, and may grant it to another. *Co. L.* 46. *b.* 270. *b.* *R. Jon.* 8.

So, if it be made to commence at a future Day.

And if the Leſſee dies before Entry, his Executor, or Adminiſtrator may enter. *Co. L.* 46. *b.*

So the Leſſee or his Executor may enter, tho' the Leſſor dies before. *Co. L.* 46. *b.*

So, if a Leaſe be to ſeveral Perſons, and one of them dies, his Intereſt ſurvives. *Co. L.* 46. *b.*

So a Releaſe by the Leſſor to the Leſſee, before his Entry, or before his Term commenced, extinguiſhes the Rent reſerved. *Co. L.* 270. *a.*

So, if the Leſſor grants the Reverſion, and the Leſſee, before Entry, attorns; the Grant of the Reverſion will be good. *R. Jon.* 8.

What Intereſt a Leſſee for Years has by a Limitation in Perpetuity, or upon Truſt, *Vide* in *Chancery*, (4 G. 2, 5.—4 W. 21.)

What Eſtate of a Leſſee determines by Forfeiture, *Vide* in *Forfeiture*, (A. 1.)

When he ſhall be puniſhed for Waſt, *Vide* in *Waſt*, (A. 2.—C. 4, 5.—F. 2.)

As to Reſervation of Rent upon a Leaſe,
*Vide Rent*, (B. 1, &c.)

How Rent ſhall be recovered by Action,
*Vide Dett*, (A. 5, 7.—B.—C.—D.—E.—F.)—*Rent*, (D. 1, &c.)

How, by Diſtreſs, or Re-entry,
*Vide Diſtreſs, per Totum.—Condition*, (O. 3, &c.)—*Rent*, (D. 3, &c.)

## (H) Tenant at Will.

### (H. 1.) Who ſhall be.

TENANT at Will is, when a Man lets Lands to another, without limiting any certain or determinate Eſtate. *Lit. S.* 68.

And it may be by expreſs Words; As, if *A.* lets Land to another, *quamdiu ambabus partibus placuerit.*

Or, *quamdiu the Leſſor pleaſes*: for by Implication of Law it ſhall be at the Will of both; for it cannot be at the Will of the Leſſor only. *Co. L.* 55. *a.* *R. Mo.* 775.

So, if it be, *quamdiu the Leſſee pleaſes*: for it ſhall be at the Will of both. *Co. L.* 55. *a.*

If it be, *de Anno in Annum quamdiu ambabus partibus placuerit*; after 2 Years it ſhall be at Will. 6 *Co.* 35. *b.*

So, if Leſſee for Years of a Houſe grants all his Houſe to *B.* without more; *B.* ſhall have it at his Will. *R.* 2 *Leo.* 78.

If a Man grants the Rents and Profits of Land to *B.* the Grantee ſhall be Tenant at Will. *Cart.* 60.

So, if a Man enters and enjoys Land by Conſent of the Owner; he ſhall be Tenant at Will to him, tho' there be not any expreſs Leaſe at Will: As, if *A.* makes a Charter of Feoffment to *B.* and delivers the Deed to him, but does not make Livery, *B.* ſhall be Tenant at Will: for he entred, and had the Land by Conſent of *A.* *Lit. S.* 70. 1 *Rol.* 859. *l.* 21. *Ray.* 147.

So, if *A.* leaſes for Life to *B.* and does not make Livery; *B.* ſhall be Tenant at Will. 1 *Rol.* 859. *l.* 17.

So, if Tenant in Tail covenants upon the Marriage of his Son, to ſuffer a Common Recovery, to the Uſe of the Son in Tail, and the Son enters, tho' the Common Recovery was not ſuffered; he ſhall be Tenant at Will. *R. Cro. Car.* 305.

So, if a Mortgagee covenants that the Mortgagor ſhall take the Profits till default of Payment; he ſhall be Tenant at Will to the Mortgagee. 2 *Cro.* 660.

Or, that the Mortgagor and his Heirs ſhall take the Profits; the Heir, after the Death of his Anceſtor, ſhall be Tenant at Will.

So, if the Mortgagor demiſes to *A.* his Executors and Aſſigns, he ſhall be Tenant at Will to the Aſſignee. *Skin.* 424.

So, if he demiſes to *A.* without more, who aſſigns to *B.* he ſhall be Tenant at Sufferance to *B.* *Skin.* 424.

So, if Tenant in Fee makes a Leaſe to attend the Inheritance, and afterwards enters and takes the Profits; he ſhall be Tenant at Will to his Leſſee. *R.* 1 *Sid.* 349, 458. 1 *Vent.* 80.

So, if he makes a Feoffment to the Intent of performing his Will, and afterwards takes the Profits; he ſhall be Tenant at Will to his Feoffee. *Lit. S.* 462.

If he makes a Feoffment upon Truſt for *A.* who enters; *A.* ſhall be Tenant at Will to the Truſtee. *Cart.* 60.

Tho' *A.* be not a Party to the Deed. *Cart.* 60.

So, if a Mortgagor or other who enters by Conſent, makes a Leaſe for Years, and the Leſſee enters, claiming nothing but his Leaſe; he is not a Diſſeiſor: But, if his Rent is paid and accepted, he ſhall be a Tenant at Will. 2 *Cro.* 660. *R. Cro. Car.* 306.

And if the Mortgagor enters after the Leaſe determined, he ſhall be Tenant at Will again to the Mortgagee. *R.* 2 *Cro.* 660. *Bridg.* 13.

So, if Tenant for Years continues after his Term, and his Rent is paid and accepted as before, he ſhall be Tenant at Will. *Per Roll, Al.* 4.

So, if *A.* demiſes a Tenement to another for Years, excepting the new Houſe for his Habitation when he pleaſes to ſtay there, and at other Times for the Uſe of the Leſſee; the Leſſee has the new Houſe as Tenant at Will. *R.* 4 *Mod.* 9, 12.

So, if *A.* gives Licence to *B.* to take the Profits of his Land; it ſhall be a Leaſe at Will. *Sal.* 588.

Or, to trade upon his Dock; it ſhall be a Leaſe of the Dock: for it is all the Profit there. *Sal.* 588.

If *A.* enters into Lands of *B.* claiming to hold them at his Will, tho' he enters of his own Head, and afterwards *B.* demands Rent of him; he ſhall be Tenant at Will. *R.* 4 *Leo.* 35.

## (H. 2.) Who not.

But if a Man enters by Colour of a Grant or Conveyance, which was void, and did not ſtand with the Rule of Law; he ſhall be a Diſſeiſor, and not a Tenant at Will. *R.* 2 *Co.* 55. *b.* *Cro. El.* 451, 585.

As

As, if a Feoffment be to *A.* to the Uſe of *B.* and no Livery, and *A.* enters; he ſhall not be Tenant at Will: for it was not intended to his Uſe. 1 *Rol.* 859. *l.* 25.

So, if *B.* enters, he is not Tenant at Will. 1 *Rol.* 859. *l.* 30.

So, if a Feoffment be upon Condition to re-enfeoff *A.* and he enters without Aſſent, he is not a Tenant at Will. *R.* 2 *Co.* 59.

So, if before the *St.* 27 *H.* 8. 10. *A.* had made a Feoffment to the Uſe of himſelf, and had entred; he was not Tenant at Will. 1 *Rol.* 859. *l.* 35.

So, if a Man makes a Leaſe for Life, and makes Livery, which is void by Reaſon of a Commencement *in futuro*; tho' the Leſſee enters and pays his Rent, he ſhall not be Tenant at Will: for he claims a Freehold. *R.* 1 *Rol.* 662. *l.* 10. *Cro. Car.* 388.

So, if a Conveyance be of Land in the Pariſh of *D.* where it lies in the Pariſh of *B.* and the Vendee enters; he is not Tenant at Will. *R.* 3 *Co.* 10. *a.*

So, if there be a Covenant only to make a Leaſe, and before the Leaſe made he enters without Aſſent; he ſhall not be Tenant at Will.

So, if a Mortgagee covenants, that he will not take the Profits till Default of Payment, and the Mortgagor enters immediately; he ſhall not be Tenant at Will, but only at Sufferance: for it was not agreed that he ſhould take, but that the Mortgagee ſhould not take. *R.* 1 *Rol.* 859. *l.* 40. 2 *Cro.* 660. 2 *Rol.* 242. *Bridg.* 12.

So, if the Mortgagee makes an Aſſignment, (which amounts to a Determination of the Will,) and afterwards the Mortgagor continues in Poſſeſſion; he ſhall be only Tenant by Sufferance. 3 *Lev.* 388. 1 *Sal.* 246.

So if the Morgagee enters upon the Mortgagor, who afterwards re-enters; the Mortgagor is not a Tenant at Will, but a Diſſeiſor: for the Entry of the Mortgagee was a Determination of his Will, and the Re-entry was wrongful. 1 *Sal.* 246.

So, if the Heir of the Mortgagor enters, (where the Agreement does not extend to the Heir) his Entry is wrongful. 1 *Sal.* 246.

So the King cannot be Tenant at Will of another. *Mod. Ca.* 248.

## (H. 3.) What Things a Leſſee at Will may do.

A Leſſee at Will may take a Releaſe of the Inheritance, and thereby his Eſtate is enlarged.

Or, a Confirmation for his Life, upon which a Remainder may be dependant. *R.* 3 *Leo.* 15.

## (H. 4.) What he ought to do.

A Leſſee at Will ought to pay the Rent reſerved. *Lit. S.* 72.

And if he does not, the Leſſor may diſtrain, or have Debt for it. *Lit. S.* 72.

## (H. 5.) What he need not do.

But a Leſſee at Will need not ſuſtain, or repair the Houſes demiſed to him. *Lit. S.* 71.

And therefore, if his Houſe decays, he ſhall not be puniſhed for Waſt. *Vide Waſt*, (C. 5.)

So, if the Houſe be burnt by negligent keeping of his Fire, an Action upon the Caſe does not lie againſt him. *R.* 5 *Co.* 13. *b.* *Cro. El.* 777, 784. 4 *Mod.* 12. 1 *Sal.* 19. *Vide Action upon the Caſe*, (B. 3.)—*Action upon the Caſe for Negligence*, (A. 6.)

But if a Leſſee at will voluntarily burns his Houſe, Treſpaſs lies againſt him. *Cro. El.* 784.

So, if he he cuts down Trees. *Co. L.* 57. *a.* *Vide Treſpaſs*, (B. 2.)

## (H. 6.) What ſhall be a Determination of the Will.

Tenant at Will may be ouſted by expreſs Words, or by Implication. *Co. L.* 55. *b.* (H. 6.) Expreſs.

As, if the Leſſor comes upon the Land, and ſays that the Leſſee ſhall not continue over. *Co. L.* 55. *b.*

If the Leſſor comes upon the Land, he may determine his Will in the Abſence of the Leſſee. *Co. L.* 55. *b.*

But Words off the Land do not determine the Will, till Notice to the Leſſee. *Co. L.* 55. *b.* *Vide Poſt*, (H. 9.)

So, if the Leſſor does a wrongful Act it amounts to a Determination of the Will: As, if without Conſent of the Leſſee, he enters and cuts down the Trees demiſed. *Co. L.* 55. *b.* (H. 7.) Implied.

Or, puts his Cattle into the Land.

Or, into a Common appendant to a Manor demiſed. *Co. L.* 55. *b.* 1 *Rol.* 860. *l.* 45.

So, if the Leſſor grants a Rent-Charge out of the Land, it ſhall be a Determination of the Will; otherwiſe the Grantee cannot diſtrain. *Semb.* 1 *Rol.* 860. *l.* 35. *Vide Poſt*, (H. 8.)

If he makes a Feoffment of the Land. 1 *Rol.* 860. *l.* 37.

Or, a Leaſe for Years, to commence immediately. *R. Ray.* 224. 1 *Vent.* 247. 2 *Lev.* 88.

Tho' it be agreed, that the Leaſe for Years ſhall not take Effect till after the Rent upon the Leaſe at Will was due; yet the Leaſe at Will ſhall be ſo determined, that Debt does not lie for the Rent at the Day agreed that the Leaſe for Years ſhall have Effect. *R.* 2 *Lev.* 88.

So, if the Leſſee cuts down Trees, pulls down Houſes, or does voluntary Waſt; it amounts to a Determination of his Will. *Co. L.* 57. *a.* 1 *Rol.* 860. *l.* 50.

So, if he grants or aſſigns his Leaſe to another. *Co. L.* 57. *a.* 1 *Rol.* 860. *l. ult.* 4 *Leo.* 35. *Jon.* 316.

And if Tenant at Will makes a Leaſe for Years and the Leſſee enters, he only ſhall be the Diſſeiſor. *R. Cro. El.* 830.

So, if the Leſſor or Leſſee be outlawed, it amounts to a Determination of the Will. 1 *Rol.* 861. *l.* 5, 8. 5 *Co.* 116. *b.*

So, if the Leſſor or Leſſee dies.

Or, if *A.* having an Eſtate deviſed to *B.* at his Age of 24 Years, till *B.* attains ſuch Age, lets it at Will, and *B.* dies. *R. Mo.* 775.

So, if the Leſſor dies, and his Heir afterwards enters. *R. Mo.* 775.

## (H. 8.) What not.

But a lawful Act upon the Land by the Leſſor, does not amount to a Determination of the Will: As, if he cuts down Trees excepted out of the Demiſe. *Co. L.* 55. *b.*

So, if the Leſſor covenants to make a Feoffment, it does not amount to a Determination of the Will, till the Feoffment be made. 1 *Rol.* 860. *l.* 37.

So, if he makes a Leaſe to commence at a future Day, it does not amount to a Determination, till the Leaſe commences in Point of Intereſt. *R.* 1 *Vent.* 247. *Ray.* 224.

So an Extent does not determine the Will, till the *Liberate*. 1 *Vent.* 248.

Nor Outlawry, till Seiſure. *D.* 1 *Vent.* 248.

So an Act by the Leſſor, which does not diſturb the Poſſeſſion, does not amount to a Determination: As, a Grant of a Rent-Charge. *Q.* 1 *Rol.* 860. *l.* 30. 852. *l.* 15. *Vide Ante*, (H. 7.)

So a Grant by the King of an Office, after the Surrender or Forfeiture of *B.* who has the ſame Office *durante bene placito* of the King; does not determine the Will of the King. *R. Skin.* 446, 580.

Nor an Act by a Stranger; As, if he enters and takes the Profits. 2 *Cro.* 660. *Per* 2 *J.* 1 *Rol.* 861. *A.*

So, if he enters with the Privity of the Leſſor, or Leſſee. 2 *Cro.* 660. *Per* 3 *J. Yel.* 74.

So, if a Woman Leſſor or Leſſee at Will takes Huſband; that does not amount to a Determination of the Will. *Co. L.* 55. *b.* *R.* 5 *Co.* 10.

Or, if Huſband and Wife demiſe Land of the Wife at Will, and the Huſband dies. *Co. L.* 55. *b.* 5 *Co.* 10. *b.*

So, if a Leaſe at Will be made by ſeveral, and one of the Leſſors dies. *Co. L.* 55. *b.* 5 *Co.* 10. *b.*

Or, if one of the Leſſees dies. *Co. L.* 55. *b.* *Dub. Dy.* 269. *b.* *Acc.* 5 *Co.* 10.

So, if a Woman Leſſor at Will takes Huſband, the Wife cannot afterwards determine the Will without her Huſband. 5 *Co.* 10. *a.*

So, if Huſband and Wife leaſe at Will, or are Leſſees at Will; the Wife cannot determine the Will: for ſhe has ſubmitted her Will to her Huſband. 5 *Co.* 10.

## (H. 9.) At what Time the *Ouſter* ſhall be.

A Leſſee at Will may be ouſted when the Leſſor pleaſes.

Or his Eſtate may be determined when the Leſſee pleaſes.

But if the Leſſor determines his Will by Words off the Land, it is not a Determination till the Leſſee has Notice. *Co. L.* 55. *b.* 1 *Vent.* 248. *Vide Ante*, (H. 6.)

So, if he does an Act inconſiſtent with the Eſtate of the Leſſee. *Per Hale*, 1 *Vent.* 247.

So a Leſſee paying Rent at *Michaelmas* and *Lady-Day*, cannot determine his Will after the Commencement of the half Year, without paying the Rent to the next Feaſt: for that would be a Wrong to the Leſſor. *D. Kd.* 65. *b.* *Per* 2 *J. Yel.* 74. *Dub.* 1 *Rol.* 861. *B.* *R.* 1 *Sid.* 339. *Per Holt*, *Sal.* 413.

Or, if Rent be payable quarterly, after the Commencement of the Quarter. *Per Roll*, *Al.* 4.

Or, if it be a Leaſe *de Anno in Annum quamdiu ambabus partibus placuerit*, after the Commencement of the Year: for it is not merely at Will; for after a Year commenced, the Leſſee ought to have it for the whole Year. *R.* 2 *Jon.* 5. *R. inter Simmons and Paſhly. B. R. T.* 2 *Jac.* 2. *Sal.* 413, 414.

So, if the Leſſor determines his Will after the Land is ſown, the Leſſee ſhall have free Ingreſs and Egreſs to cut and carry away the Corn when it is ripe. *Lit. S.* 68. *Sal.* 413. *Vide Biens*, (G. 2.)

So, if the Corn be cut, and not carried off the Land. *Co. L.* 55. *b.*

So he ſhall have free Ingreſs and Egreſs for a reaſonable Time to remove his Goods and Utenſils out of his Houſe. *Lit. S.* 69.

So, by the Cuſtom of *London*, a Will ſhall not be determined without half a Year's Warning if the Houſe be above 40*s.* a Year, and, if under ſuch Rent, without a Quarter's Warning. *Skin.* 649.

And till that time elapſes, the Leſſee cannot be ouſted by Ejectment, *&c. Dub. Skin.* 649.

## (I) Tenant by Sufferance.

### (I 1.) Who ſhall be.

TENANT by Sufferance is he, who enters by lawful Demiſe or Title, and afterwards wrongfully continues in Poſſeſſion: As, if Tenant *pur auter vie* continues in Poſſeſſion after the Death of the *Ceſtuy que vie*. *Co. L.* 57. *b.* 2 *Leo.* 46. 3 *Leo.* 153.

Or, if Tenant for Years continues after the Term is expired, or determined. *Co. L.* 57. *b.* 2 *Leo.* 46.

So, if a Deviſee for Life, upon Condition that if he do, *&c.* his Eſtate ſhall ceaſe, continues in Poſſeſſion after the Condition broken; he ſhall be a Tenant by Sufferance. *Per Gawdy*, 3 *Leo.* 153. 2 *Leo.* 142.

So any, who continues in Poſſeſſion, after a particular Eſtate is ended, without Agreement. *Cart.* 64.

### (I. 2.) Who not.

But none ſhall be Tenant by Sufferance againſt the King. *Co. L.* 57. *b.* 2 *Leo.* 142. for if his Tenant holds over, he ſhall be an Intruder. *Hard.* 25.

So, if a Guardian continues in Poſſeſſion after the full Age of the Heir; he is not a Tenant by Sufferance, but an Abator. *Co. L.* 57. *b.* 271. *a.*

So, if a Cuſtom is alledged, that a Leſſee for Years ſhall continue half a Year after his Term; it will not be a good Cuſtom. *Mo.* 8.

So now, by the *St.* 4 *Geo.* 2. 28. If Tenant for Life, or Years, or in Poſſeſſion under, or by Colluſion with him, hold over after Demand and Notice in Writing for delivering Poſſeſſion by the Leſſor, *&c.* or his Agent, he ſhall pay at the Rate of double his Rent for the Time he ſo continues Poſſeſſion; to be recovered by Action of Debt, on which ſpecial Bail ſhall be required, and no Relief in Equity. *

* [By the *St.* 11 *Geo.* 2. 19. Tenants giving Notice to quit, and not delivering Poſſeſſion at the Time contained in ſuch Notice, ſhall pay double Rent.]

## (K) Eſtates undivided.

### (K. 1.) Joint-tenants.

ESTATES are ſeveral, or undivided.

Eſtates undivided are by Deſcent only, as Eſtates in Coparcenary; *De quo, Vide Parceners*, (A. 1, &c.) (K. 1.) Who are. *Vide Chancery*, (3 V. 3.)

Or by Purchaſe only upon a joint Title, as Eſtates in Joint-tenancy. *Co. L.* 188. *b.*

Or Eſtates in Common; which may be by Deſcent, Purchaſe, or Preſcription. *Co. L.* 188. *b.*

Joint-tenants are, when a Man eneſeoffs or otherwiſe conveys Lands or Tenements to 2 or more jointly. *Vide Lit. S.* 277.

And

And if the Conveyance be to them and their Heirs; they are Joint-tenants in Fee. *Co. L.* 180. *a.*

So, if ſeveral make a *Diſſeiſin*, to the Uſe of themſelves; they are Joint-tenants. *Lit. S.* 278.

So, if ſeveral abate, intrude, or uſurp upon another; they are Joint-tenants. *Co. L.* 181. *a.*

So, if *A.* diſſeiſes another to the Uſe of ſeveral Perſons, who agree to it. *Co. L.* 180. *b.*

If an Eſtate be to *A.* and the Heirs of his Body, Remainder to the right Heirs of *B.* who has 2 Daughters, and dies; the Daughters take jointly, and not as Parceners: for they take by Purchaſe. *R.* 3 *Leo.* 14.

If a Conveyance be to ſeveral for Life, or *pur auter vie*; they are Joint-tenants for Life. *Co. L.* 180. *a.*

And tho' there be ſeveral Determinations of their Eſtate, yet they may be Joint-tenants: As, if a Rent be granted to *A.* and *B.* till *A.* marries, and *B.* be advanced to a Benefice.

Or, *habendum* to them, *viz.* to *A.* till Marriage, and to *B.* till Advancement; they are Joint-tenants in the mean Time: and if *A.* dies before Marriage, the Rent ſurvives; if after, it ceaſes for a Moiety. *Co. L.* 180. *b.*

So, tho' there be a Severance by the *Viz.* or *Habendum*; for that will be repugnant: As, if 2 Acres be granted to *A.* and *B.* *habendum* the one to *A.* and the other to *B.* *Hob.* 172. 1 *Sal.* 391. *Vide Poſt*, (K. 2.)

So, if a Rent of 40*l.* be granted to *A.* and *B.* equally to be divided, *viz.* 20*l.* to each for Life. *R.* 1 *Sal.* 390.

So they may be Joint-tenants, tho' there be not an equal Benefit of Survivorſhip: As, a Grant to *A.* and *B.* for the Life of *B*; If *A.* dies, the Eſtate ſurvives; not if *B.* dies; for it is determined. *Co. L.* 181. *b.*

So, tho' the Eſtates commence at ſeveral Times: As, if *A.* diſſeiſes another to the Uſe of ſeveral, who agree to it, one at one Time, another at another. *Co. L.* 188. *a.* *Pal.* 373.

If a Feoffment be to the Uſe of himſelf and ſuch Wife as he ſhall afterwards marry, for Life; they are Joint-tenants. *Co. L.* 188. *a.*

So, tho' there be ſeveral Inheritances; As, if a Conveyance be to 2 Men and the Heirs of their Bodies; they have a joint Eſtate for Life, for the Words, *to them*, are joint; tho' the Inheritance of Neceſſity ſhall be ſeveral, becauſe they cannot have one, but ſeveral Heirs of their Bodies. *Lit. S.* 283. *Vide Poſt*, (K. 2.)

Or, to 2 Women and the Heirs of their Bodies. *Lit. S.* 284.

Or, to 2 Men and a Woman and the Heirs of their Bodies; or *è Contra*. *Co. L.* 184. *a.*

So, if it be to a Man and a Woman who cannot intermarry: As, to *A.* and his Mother, or Siſter, or Aunt, *&c.* *Co. L.* 184. *a.*

So, if Land be conveyed to *A.* and *B.* and the Heirs of *B.* they are Joint-tenants for Life. *Lit. S.* 285. *R. Cro. El.* 470. 2 *Co.* 60. *b.*

Tho' it be to *A.* and *B.* *habendum ſucceſſivè*. *R.* 1 *Leo.* 318. 11.

So there may be Joint-tenants of the Inheritance, tho' the Eſtates in Poſſeſſion are ſeveral: As, if Joint-tenants make ſeveral Leaſes, or Gifts in Tail, and afterwards grant the Reverſion to 2 and their Heirs; they are Joint-tenants of the Reverſion in Fee. *Co. L.* 183. *b.*

So, if a Man conveys to *A.* and *B.* and the Heirs of their Bodies, Remainder to them and their Heirs; they are Joint-tenants of the Fee: for they take the Remainder as a new Purchaſe. *Co. L.* 184. *a.*

So there may be Joint-tenants of a Chattel; As, if a Man leaſes to ſeveral Perſons for Years. *Lit. S.* 281.

So, if a Man gives an Horſe, or other Goods and Chattels to divers Perſons; they are Joint-tenants of them, and the Survivor ſhall have the Whole. *Lit. S.* 281.

Tho' they are *Choſes in Action*: As, if a Man makes an Obligation, Covenant, or other Contract to divers; they are Joint-tenants of the Debt, or Duty. *Lit. S.* 282.

Tho' a Chattel Real or Perſonal be given to a Man in a natural Capacity, and to another who has a politick Capacity, as a Biſhop, Abbot, *&c.* for he takes Chattels in his natural, and not his politick Capacity. *Co. L.* 190. *a.* *Vide Poſt*, (K. 2.)

Or, if a Chattel Real be given to a *Feme Covert* and another. *R. Pl. Com.* 418. *b.* *Vide Poſt*, (K. 2.)

So there may be Joint-tenants of a Right: As, if Joint-tenants are diſſeiſed, they remain Joint-tenants of the Right. *Co. L.* 188. *a.*

If 2 Women take Huſbands, who alien in Fee, and die, the Women are Joint-tenants of the Right. *Co. L.* 188. *a.*

If 2 Joint-tenants within Age make a Feoffment, and one dies; the Survivor may enter, or have a *Dum fuit infra Ætatem* for the Whole. *Co. L.* 337. *b.*

And a Right of Entry and of Action may ſtand in Jointure: As, if Huſband and Wife and *A.* are Joint-tenants, and the Huſband aliens the Whole, and dies; this was a Diſcontinuance to the Wife, and ſhe had only a Right of Action, and a *Diſſeiſin* to *A.* who may enter: Yet the Wife and *A.* are Joint-tenants of the Right. *Co. L.* 188. *a.* *Vide Poſt*, (K. 2.)

And Joint-tenants of a Right ſhall be Joint-tenants again, if they recover. *Co. L.* 188. *a.*

Tho' they recover by ſeveral Actions: As, if Women, Joint-tenants of a Right, recover by ſeveral Writs of *Cui in vita*. *Co. L.* 188. *a.*

If Joint-tenants being diſſeiſed, one of them (his Companion being ſummoned and ſevered) recovers a Moiety by one Aſſiſe, and the other by another Aſſiſe. *Co. L.* 188. *a.*

If Joint-tenants and to the Heirs of one of them, being diſſeiſed, one of them recovers by Writ.

If they loſe by Default, and one of them recovers by Writ of Right, the other by *Quod ei deforceat*. *Co. L.* 188. *a.*

(K. 2.) Who are not.

But if any have Lands or Tenements by ſeveral Titles they are Tenants in Common, and not Joint-tenants; or if they are ſeiſed in ſeveral Rights: As, if Lands be given to 2 Corporations and their Succeſſors. *Vide Poſt*, (K. 8.)—*Chancery*, (3 V. 4.)—*Deviſe*, (N. 8.)

Or, to 2 Corporations Sole, Regular or Secular, as 2 Abbots, Biſhops, *&c.* for each is ſeiſed in Right of his Abbey, Biſhoprick, *&c.* *Lit. S.* 296.

Or, to 2 Parſons and their Succeſſors; and each is ſeiſed in Right of his ſeveral Church.

So, if they be given to a Man in his natural, and to another in his politick Capacity: As to *A.* and ſuch an Abbot, Biſhop, Parſon, *&c.* *Lit. S.* 297. *Vide Ante*, (K. 1.)

To the King and a Subject. *Co. L.* 190. *a.*

So, if an Obligation, *&c.* be made to *A.* and a Corporation; it does not ſurvive if *A.* dies. *Ley* 82.

If a Chattel Perſonal be given to *A.* and a *Feme Covert*. *Pl. Com.* 418. *b.* *Vide Ante*, (K. 1.)

So, if Lands be given to 2 and the Heirs of their Bodies; the Inheritance in Tail is ſeveral, and not joint: for of Neceſſity they muſt have ſeveral Heirs. *Lit. S.* 283, 284. *Vide Ante*, (K. 1.)

So, if Land be given for Life, Remainder to the right Heirs of *A.* and *B*; their Heirs are not Joint-tenants. *Co. L.* 188. *a.*

So, if a Remainder be to the Heirs Males of *A.* and *B.* they have ſeveral Eſtates Tail. *R. Cro. El.* 220. 1 *Leo.* 212.

So, if a Corody be granted to 2 and their Heirs; this being uncertain in it's Nature, ſhall amount to a Grant of a ſeveral Corody to each. *Co. L.* 190. *a.*

So, if a Man enfeoffs another of a Moiety, 3d Part, *&c.* of his Land, without limiting any Part in certain; the Feoffee ſhall have it with him in Common. *Lit. S.* 299.

So, if Lands given by joint Words, are afterwards ſevered in the *Habendum*; As, a Gift to *A.* and *B. Habendum* a Moiety to one and his Heirs, and the other Moiety to the other and his Heirs, they are Tenants in Common. *Lit. S.* 298. *Vide Ante*, (K. 1.)

So, a Leaſe for Life, or Years, to 2, *Habendum* a Moiety to one, and the other Moiety to the other. *Co. L.* 183. *b.*

Or, *Habendum* to the Uſe of one for Life, and afterwards to the Uſe of the other. *Semb.* 1 *Leo.* 318.

So, if a Man covenants to ſtand ſeiſed to *A.* and *B. equally to be divided*, and their Heirs; they are Tenants in Common of the Inheritance, as well as of the Eſtate for Life. 2 *Vent.* 365, 6.

If an Eſtate be limited to *A.* and *B. equally divided*, or, *equally to be divided*, it is all one; for they are Tenants in Common. 2 *Vent.* 366.

If a Copyhold be ſurrendered to 5 *to be equally divided*, and their reſpective Heirs; they are Tenants in Common. *R. per* 2 *J. Holt cont.* H. 12 *W.* 3. *inter Fiſher and Wigg*, 1 *Sal.* 391.

If a Deviſe be to his younger Children *Share and Share alike*. *R. Ca. Parl.* 210.

If a Copyhold be granted to 3, *Habendum ſucceſſivè*. *Semb.* 1 *Leo.* 318.

So, if a Parcener or Joint-tenant conveys his Part to *A*; he and the other Parcener or Joint-tenant are Tenants in Common: for they claim by ſeveral Titles. *Lit. S.* 292, 294, 295, 309.

Be the Conveyance in Fee, in Tail, or for Life. *Lit. S.* 300, 301, 302.

So, if both Parceners, or Joint-tenants convey, *&c.* the Feoffees, or Grantees are Tenants in Common. *Lit. S.* 295, 300.

So, if there be divers Joint-tenants, and one of them releaſes his Part to one of his Companions; he is Tenant in Common for that Part with his other Companions. *Lit. S.* 304.

So a Man may preſcribe for him and his Anceſtors, to hold in Common with *B.* and his Anceſtors. *Lit. S.* 310.

So an Eſtate of Freehold or Inheritance cannot ſtand in Jointure with a Term for Years: And therefore, if Lands are given to *A.* and *B. Habendum* to one for Life, to the other for Years; they are not Joint-tenants. *Co. L.* 188. *a.*

If a Deviſe be to *A.* till *B.* attains full Age, and then to *A.* and *B.* there cannot be a Term for Years in *A.* and a Freehold to *B.* and therefore the Term ſhall be merged, and they are Joint-tenants immediately. *Semb. Cro. El.* 532.

So a Right of Action, or Entry, cannot ſtand in Jointure with a Freehold, or Inheritance, in Poſſeſſion: And therefore, if Huſband and Wife and *A.* are Joint-tenants, and the Huſband aliens, and dies; the Wife and *A.* are not Joint-tenants. *Co. L.* 188. *a. Vide Ante*, (K. 1.)

So, by the Cuſtom of Merchants, if they, as Joint-Merchants, have Chattels perſonal or *Choſes in Action*; they are not Joint-tenants of them. *Co. L.* 182. *a.* 2 *Brownl.* 99.

And this extends to Shopkeepers, as well as other Merchants; for there are 4 Species of Merchants, and all within this Cuſtom; *viz.* Merchant-Adventures, Dormant, Travelling, and Reſident. 2 *Brownl.* 99.

(K. 3.) When a joint Eſtate ſurvives.

If there are Joint-tenants in Fee and one dies; the Survivor ſhall have the Whole in Fee: for it is the Nature of Joint-tenancy, that the Survivor ſhall take the Whole if the Jointure continues. *Lit. S.* 280.

So, if there are Joint-tenants for Life, and one dies; the other ſhall have the Whole by Survivorſhip.

Tho' there are ſeveral Inheritances limited upon the Eſtate for Life. *Lit. S.* 283.

So, if one Joint-tenant enters into Religion, which is a Civil Death; the other ſhall have the Whole by Survivorſhip. *Co. L.* 181. *b.*

And the Survivor ſhall take, tho' the other deviſes his Part; for the Deviſe does not take Effect till the Death of the Teſtator; and immediately upon his Death, the Land ſurvives. *Lit. S.* 287. *Vide Deviſe*, (N. 8, 21.)

If a Woman Joint-tenant takes Huſband, and dies; her Eſtate ſurvives, and does not go to the Huſband. *Co. L.* 185. *b.* *Vide Baron and Feme*, (E. 2.)

So the Survivor ſhall take, tho' the Jointure was ſevered by a Diſcontinuance, a Leaſe for Life, *&c.* if it be afterwards recontinued, *&c.* before the Death of any of the Joint-tenants. *Co. L.* 193. *a.*

(K. 4.) When not.

But Survivorſhip is the peculiar Privilege of Joint-tenants. *Co. L.* 181. *a.*

And therefore, an Eſtate in Parcenary, or in Common, does not ſurvive.

Tho' a Leaſe was expreſs to *A.* and *B.* and the Survivor of them, and afterwards *A.* grants his Part to *D.* who is thereby Tenant in Common with *B.* for *Expreſſio eorum, quæ tacite inſunt, nihil operatur.* *Co. L.* 191. *a.*

So a bare Truſt, or Authority, does not ſurvive. *Vide Co. L.* 181. *b.*

(K. 5.) If the Jointure does not continue. What ſhall be a Severance; What not. *Vide Chancery*, (3 V. 5.)

So there never ſhall be a Survivorſhip, if the Eſtate does not continue in Jointure, at the Death of him who dies firſt. *Co. L.* 188. *a.* 193. *a.*

And therefore, if one Joint-tenant conveys his Part to a Stranger, or releaſes to his Companion; the Jointure is ſevered, and the Eſtate does not ſurvive.

Tho' they are Joint-tenants in Fee, and one of them conveys only for Life: for the Freehold being ſevered, the Reverſion upon it is alſo ſevered. *Lit. S.* 302.

Tho' his Conveyance was only for his own Life, which determines at his Death, when the Survivor ought to take. *Semb. Co. L.* 193. *a.*

So, if Joint-tenants in Fee join in a Leaſe to *A.* and a Corporation Sole for Life: for now the Reverſion, depending upon ſeveral Freeholds, is ſeveral. *Co. L.* 191. *b.* *Vide Ante*, (K. 2.)

So if a Wife Joint-tenant takes Huſband, who makes a Feoffment, *&c.* the Jointure is ſevered during the Continuance of the Diſcontinuance: for a Right of Action cannot ſtand in Jointure with a Freehold, or Inheritance in Poſſeſſion. *Vide Ante*, (K. 2.)

So, if Joint-tenant for Life makes a Feoffment, or Grant in Tail, or Leaſe *pur auter vie*, which amounts to a *Diſſeiſin*, and deveſts the Reverſion; the Jointure is ſevered. *Co. L.* 191. *b.* And this ſhall be a Forfeiture. *Vide Forfeiture*, (A. 1.)

So, if a Joint-tenant within Age makes a Feoffment; the Jointure is ſevered, tho' the Feoffment was voidable. *Co. L.* 337.

So,

So, if one Joint-tenant levies a Fine of the Whole; tho' it be to the old Uſes. *Mod. Ca.* 45.

So, if there be 2 Joint-tenants for Life, and the one levies a Fine *Sur conceſſit* to *A.* and dies; his Moiety does not ſurvive, but goes to him in Reverſion. *R. Jon.* 55.

So, if a Leaſe be to 2 for their Lives; and by another Conveyance, the Leſſor grants the Reverſion to them and the Heirs of their Bodies; the Jointure is ſevered: for the Eſtate is executed, and they are Tenants in Common in Tail in Poſſeſſion. *Co. L.* 182. *b.* *Vide Ante*, (B. 18.)

So, if a Reverſion be granted to one of the Leſſees, in Fee, or in Tail: for the Reverſion is executed for a Moiety. *Co. L.* 182. *b.*

So, if a Reverſion be granted to a Leſſee and Stranger, and their Heirs. *Co. L.* 182. *b.*

So, if a Reverſion deſcends to a Joint-tenant. *R.* 2 *And.* 202. *Cro. El.* 743. *R. Cro. El.* 470, 481. 2 *Co.* 60. *b.*

So, if there be a Leaſe for Life, and the Leſſor grants the Reverſion to 2 in Fee, and the Leſſee grants his Eſtate to one of them; the Jointure is ſevered, and the Eſtate executed for a Moiety. *Co. L.* 183. *a.*

Or, if the Leſſee grants to one of them and a Stranger. *Co. L.* 182. *b.*

So, if there be Joint-Leſſees of a Term, and one of them aſſigns Part of his Term to the other; it ſhall be a Severance of the Jointure for the Whole. *Cro. El.* 33.

So, if one of them mortgages his Part. *R.* 1 *Sal.* 158.

So, if there be 2 Joint-tenants of an Advowſon, and they agree to preſent by Turn, and that one ſhall have one Moiety, and the other the other Moiety, and this is executed by a Preſentation by each; the Jointure is ſevered. *R. Carth.* 506.

So, if there be Joint-tenants for Life, and one leaſes for Years; it ſhall be a good Severance during the Term. *Dy.* 187. 2 *Cro.* 417.

So, if he leaſes his Part to commence at a future Day. 2 *Cro.* 91.

Or, to commence after his Death, during the Life of his Companion. *R.* 2 *Cro.* 91. *Mo.* 776. 2 *Rol.* 89. *l.* 5.

So, if he leaſes for Years, if he or his Companion live ſo long. *R.* 2 *Cr.* 377. *Bridg.* 43.

If Huſband and Wife and *A.* be Joint-tenants, and the Huſband and Wife make a Leaſe for Years, if they or *A.* live ſo long; tho' the Leaſe is voidable by the Wife, yet if the Huſband and Wife die without avoiding it, it ſhall be good againſt *A.* ſurviving: for the Severance continues. *R. Bridg.* 43.

But if one Joint-tenant makes a Leaſe for Years, this does not ſever the Jointure as to the Freehold. *Co. L.* 185. *a.*

So, if 2 Joint-tenants in Fee make a Leaſe for Life, and the Leſſee ſurrenders to one of them: for this enures to both. *Co. L.* 192. *a.*

If a Woman Joint-tenant takes Huſband, it is not a Severance of the Jointure. *R. Pl. Com.* 418. *b.*

Otherwiſe, where a Woman Joint-tenant of a Perſonal Thing takes Huſband. *Pl. Com.* 418. *b.*

Yet if a Joint-tenant for Years makes a Leaſe for a leſs Term; that ſevers the Jointure, and the Term does not ſurvive. *Co. Lit.* 192. *a.*

(K. 6.) Joint-tenants how ſeiſed.

Joint-tenants are ſeiſed *per my & per tout.* *Lit. S.* 288.

When Huſband and Wife are ſeiſed by Moieties, or by Entierties, *Vide Baron and Feme*, (D. 2, 3.)

But Joint-tenants have a Right only to a Moiety. *Vide Co. L.* 186. *a.*

And therefore, if one makes a Feoffment, Gift, or Demiſe of his Part; only a Moiety paſſes. *Co. L.* 186. *a.*

So, if one bargains and ſells his Lands, and before Inrolment the other dies; yet only a Moiety paſſes. *Co. L.* 186. *a.* 2 *Cro.* 53. *Cro. Car.* 217. *Mo.* 776.

If a Leaſe be by all, rendring Rent to them, and one does not ſeal it; only a Moiety paſſes. 1 *Vent.* 136.

If all join in a Feoffment, each gives but his Part. *Co. L.* 186. *a.*

And therefore, if a Feoffment be upon Condition, that upon Breach one ſhall enter into the Whole; yet he ſhall enter only into his Part. *Co. L.* 186. *a.*

And if one Feoffor dies, the Feoffee cannot plead the Feoffment of the Survivor: for each gave only his Part. *Co. L.* 186.

So every Joint-tenant loſes, or forfeits only his Part. If one be an Alien, the King, upon Office, ſhall have only a Moiety. *Co. L.* 186. *a.*

If one be a Villein, the Lord ſhall enter but into a Moiety. *Co. L.* 186. *a.*

So the one may demiſe his Part for Years, or at Will, to his Companion. *Co. L.* 186. *a.*

Or make his Companion his Bailiff of his Part. *Co. L.* 186. *a.*

And maintain Account againſt him in ſuch Caſe. *Co. L.* 186. *a.* *Vide Poſt*, (K. 8.)

(K. 7.) What Charges bind the Survivor. *Vide Chancery*, (3 V. 7, &c.)

So, if one Joint-tenant does a Thing which gives to another an Eſtate, or Right in the Land, it binds the Survivor: As, if a Joint-tenant in Fee, or for Life, makes a Leaſe for 40 Years. *Lit. S.* 289.

So, if he leaſes to commence *in futuro*, and dies before the Commencement. *Lit. S.* 289.

So, if he leaſes for Years the Veſture or Herbage of the Land: for ſuch Leſſee has a Right to the Land. *Co. L.* 186. *b.*

And the Survivor ſhall not have the Rent upon a Leaſe for Years, tho' he has the Reverſion. *Co. L.* 185. *a.*

So, if he acknowledges a Statute, Recognizance, or Judgment, and Execution be ſued in his Life-time; that binds his Companion who ſurvives. *Co. L.* 184. *b.*

So, if there be a Recovery againſt him, tho' Execution be not ſued in his Life-time. *Co. L.* 185. *a.*

But if a Joint-tenant grants a Rent Charge, and dies; this does not bind the Survivor: for he claims *paramount* the Charge, and may plead a Feoffment to him, without naming his Companion. *Lit. S.* 286.

So, if he grants Common, *Eſtovers*, a Corody, *&c.* *Co. L.* 185. *a.*

So, if he acknowledges a Statute, Recognizance, or Judgment, and dies before Execution. *Co. L.* 184. *b.*

Or, be indebted to the King. *Co. L.* 185. *a.*

So, if he contracts to make a Leaſe for Years; that does not bind the Survivor.

Or grants, that if *A.* pays ſo much at *Michaelmas*, he ſhall have it for Years. *Co. L.* 185. *a.*

So, if he takes a Leaſe, by Indenture, of his own Land, from a Stranger; the Survivor is not bound by this *Eſtoppel*. *Co. L.* 185. *a.*

So, if a Joint-tenant grants the Part of his Companion, it ſhall be void, tho' he ſurvives: for it was in Contingency. *R.* 2 *Cro.* 91. *Mo.* 776.

But if a Joint-tenant grants a Rent-Charge, *&c.* and afterwards releaſes to his Companion; he ſhall hold ſubject to the Charge, tho' he ſurvives; For he does not claim by Survivorſhip, but under the Grant. *Co. L.* 185. *a.*

How a Conveyance enures by one Joint-tenant to another, *Vide Releaſe*, (B. 4.—D. 1, &c.)

## (K. 8.) Tenants in Common.

Tenants in Common are thoſe, who claim by ſeveral Titles, or in ſeveral Rights tho' by one Title, and have their Poſſeſſion in Common. *Co. L.* 189. *Vide Ante*, (K. 2.)

And they may be by Deſcent, Purchaſe, or Preſcription. *Co. L.* 188. *b.*

If Tenant in Tail to him and the Heirs of the Body of his Wife, has Iſſue a Daughter, and afterwards another Daughter by another Venter, diſcontinues, and diſſeiſes the Diſcontinuee, and dies; his Daughters are Tenants in Common by Deſcent: for the eldeſt is remitted to a Moiety; and therefore they are not Parceners; for they claim by ſeveral Titles. *Co. L.* 349. *b.*

Tenants in Common have a ſeveral Right to the Freehold, and Inheritance.

And therefore, in an Action Real, or which concerns the Title, they ought not to join, except it be for an intire Thing. *Vide Abatement*, (E. 10.)

So they have a ſeveral Right and Title to a Moiety of the Things which they hold in Common: and therefore, if one dies, his Moiety does not ſurvive, but goes to his Heir; or if it be a Chattel, to his Executor or Adminiſtrator.

And one of them may enfeoff his Companion of his Part. *Co. L.* 200. *b.*

If one levies a Fine, makes a Feoffment, *&c.* of the Whole; his Moiety paſſes.

If one actually ouſts his Companion of the Poſſeſſion, the other may maintain an Ejectment againſt him. *Lit. S.* 322.

So, if one ouſts the other of his Ward, or other Chattel Real, the other ſhall have Ejectment of Ward againſt him. *Lit. S.* 323.

So, if one Tenant in Common deſtroys the Flight of a Dovecote, the other ſhall have Treſpaſs. *Co. L.* 200. *a.*

Or deſtroys all the Deer in their Park, *&c. Co. L.* 200. *b.*

Or removes the Mereſtones *pro metis & bundis terrarum ſuarum. Co. L.* 200. *b.*

If one diſturbs the other in the ſetting up of Hurdles for their Foldage. *Co. L.* 200. *b.*

So, if one Tenant in Common of a Wood, Turbary, Piſcary, *&c.* does Waſt againſt the Will of the other; he ſhall have Waſt againſt him. *Co. L.* 200. *b.*

If one corrupts the Water, the other ſhall have an Action upon the Caſe. *Co. L.* 200. *b.*

If one will not repair their Houſe, Mill, *&c.* the other ſhall have a Writ *de Reparatione faciendâ. Co. L.* 200. *b. F. N. B.* 127.

If one makes the other his Bailiff of his Part, as he may, he ſhall have Account againſt him. *Co. L.* 200. *b. Vide Ante*, (K. 6.)

But their Occupation is in Common *per my & per tout:* and therefore, the one ſhall not have Ejectment againſt the other, without an actual *Ouſter. Co. L.* 199. *b. R. Cro. El.* 220. 1 *Leo.* 212. *D.* 1 *Sal.* 391, 2.

So the one cannot diſſeiſe the other, without an actual *Ouſter. R.* 1 *Sal.* 392.

So, if the one takes an intire Chattel Real, as the Body of his Ward, Villein, *&c.* the other may take him back, but ſhall not have Remedy by Action. *Co. L.* 200. *a.*

So,

So, if the one takes a Chattel Perſonal intire, or not intire; the other may retake it when he has an Opportunity, but has no Remedy by Action. *Co. L.* 200. *a.*

So, if an Eſtray, or other Thing belonging to a Manor, which they have in Common, happens.

So, if *A.* has a Ship in Common with *B.* and diſpoſes the Whole to another; no Remedy lies by Action againſt *A.* *R.* 1 *Lev.* 29.

When Partition ſhall be made between Joint-tenants, and Tenants in Common, and How, *Vide Parceners*, (C. 1, &c. 6.)—*Pleader*, (3 F. 1, &c.)

When they ſhall join in a Suit, or be jointly ſued, and When not, *Vide in Abatement*, (E. 9, 10.—F. 5, 6.)—*Chancery*, (3 V. 1, &c.)

What Words in a Deviſe, *&c.* make an Eſtate in Common, *Vide Ante*, (K. 2.)—*Deviſe*, (N. 8.)—*Chancery*, (3 V. 4.)

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# ESTOPPEL.

## (A) Eſtoppel; What ſhall be.

### (A. 1.) By Matter of Record.

AN *Eſtoppel* is, when a Man is concluded, by his own Act or Acceptance, to ſay the Truth. *Co. L.* 352. *a.*

And it may be by Matter of Record, of Writing, or *in Pais*. *Co. L.* 352. *a.*

By Matter of Record; as, if the King by his Letters Patent grants Lands to *B.* claiming Nothing in the Freehold; *B.* cannot afterwards ſay againſt the King, that he was enfeoffed by *A.* 1 *Rol.* 864. *l.* 6.

So, if a Man levies a Fine, or ſuffers a Recovery to *A.* of the Land of *B.* in the Name of *B.* It ſhall be an Eſtoppel to *B.* and he cannot avoid it without a Writ of Diſceit; for he cannot aver againſt the Record. 1 *Rol.* 863. *l.* 17, 20, 22.

If a Man acknowledges a Deed to be inrolled in Court, and it is inrolled of Record; he cannot afterwards ſay, *Non eſt Factum*. *R.* 39 *H.* 6. 32. *b.* 1 *Rol.* 862. *l.* 12.

Tho' it be acknowledged by his Attorny for him, and not in Perſon. *R.* 39 *H.* 6. 32. *b.*

Tho' the Attorny had no ſpecial Authority to do it. *R.* 39 *H.* 6. 32. *b.*

If *A.* levies a Fine of the Land of another, he ſhall be eſtopped to ſay, *Partes Finis nihil habuerunt*. *Jon.* 459.

So a Man may be eſtopped, by Pleading upon Record: as, if a *Scire facias* be upon a Judgment in *Trinity* Term, and *Nul tiel Record* is pleaded, and Judgment thereupon; the Defendant cannot afterwards ſay, that the Judgment was in *Michaelmas* Term. *R.* 1 *Sal.* 276.

So, if *A.* by Deed be bound that he will not ſue *B.* and a Breach is aſſigned, that he ſued an Original, and at the Return in Bank, *obtulit ſe verſus B. in Placito præd'*; he cannot plead, that he did not ſue *Modo & Forma*: for he is eſtopped by the Record. 1 *Rol.* 863. *l.* 30.

Whether eſtoppel can arise from surrender of copyhold. See 3. Dunf. Plad 371. Co. Litt. 62. a. 13. ed. n. 1. & opinions of Mr. Charles Yorke & Mr. Brooke &c. in my Case Books, vol. 1. p. 229.

In Waſt againſt a Leſſee of the Demiſe of the Plaintiff, if the Defendant abates the Writ by Plea, *that the Demiſe was by the Plaintiff and another*; in another Action by them he ſhall be eſtopped to ſay, that the Leaſe was only by One. 1 *Rol.* 864. *l.* 10.

If a Man by Plea confeſſes a Tenure *in Capite*, and then alledges Licence of Alienation; he cannot ſay upon another Alienation, that he does not hold *in Capite*. 4 *Inſt.* 111.

If in a *Nuper obiit*, or *Rationabili Parte*, by one Parcener againſt another, the Defendant diſclaims in Blood, and claims by Purchaſe; the Plaintiff ſhall have a Writ of *Mord'anceſtor* for the Whole. *Co. L.* 164. *b.*

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Or, by any Confeſſion or Admiſſion upon Record. *Co. L.* 352. *a.*

So a Man may be eſtopped by a Verdict upon Record: As, in Treſpaſs, if the Defendant preſcribes for Common, and the Plaintiff traverſes the Preſcription, the Defendant may ſay, that in a former Action by the Plaintiff againſt the Defendant, the ſame Preſcription was found againſt the Plaintiff. *Semb. Sho.* 28.

So a Man may be eſtopped, by not denying a Matter alledged upon Record: As, if *A.* be ſeiſed in Fee, and *B.* brings Waſt againſt him, ſuppoſing him in of his Demiſe; tho' *A.* pleads, *No Waſt done*, and it be found for him, he ſhall be eſtopped to ſay, that he is not in of the Demiſe of *B.* 1 *Rol.* 864. *l.* 15.

If a Prior prays in Aid of his Patron, and the Plaintiff ſays, *that he has a Convent and Common Seal*; if he does not deny it, but demurs, whereby he is ouſted of Aid, he cannot afterwards ſay, that he has no Convent or Common Seal, when he did not deny it before. 1 *Rol.* 864. *l.* 40.

If the Defendant prays in Aid of the Reverſioner, and the Plaintiff ſays, *that he is ſeiſed in Fee*, which he does not deny, whereby he is ouſted of Aid; he ſhall not afterwards ſay, that he is Tenant for Life. 1 *Rol.* 864. *l.* 45.

And Matter of Eſtoppel in a Count (tho' it be but by Way of Suppoſal) after Judgment, concludes the Parties, in another Action. *Co. L.* 352. *b.* *Vide Poſt*, (E. 5.)

So a Matter expreſly alledged in a Plea, Replication, or other Pleading, after Nonſuit, as well as after Judgment. *Co. L.* 352. *b.*

But after a Nonſuit, a Matter of Suppoſal in the Count, does not eſtop. *Co. L.* 352. *b.*

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If a Condition be, *to perform the Covenants in an Indenture*; he ſhall be eſtopped to ſay, that there is no ſuch Indenture. *R.* 1 *Rol.* 408. 1 *Rol.* 872. *l.* 30.

So in all Caſes, where the Condition of a Bond has a Reference to any particular Thing, the Obligor ſhall be eſtopped to ſay, that there is no ſuch Thing: As, if a Condition be, *to pay all Sums which T. is bound to pay to the Children of B. according to the Will of D*; he ſhall be eſtopped to ſay, that *T.* is not bound to pay, *&c.* 1 *Rol.* 872. *l.* 50. *Dy.* 196. *a.*

If a Condition be, *to releaſe all the Right which he has in B. for his Life*; he cannot ſay, that he has no Right in *B.* for Life. *Per Tanf.* 1 *Rol.* 873. *l.* 5. *Vide infra.*



If

If a Condition be, *to pay Money for which he is bound in ſuch a particular Recognizance*; he cannot ſay, that there is no ſuch Recognizance. *R.* 1 *Rol.* 873. *l.* 10.

So he cannot plead, that he was bound in ſuch an one as appears to be no Recognizance. *R.* 1 *Rol.* 873. *l.* 15.

If it be, *to give Part of the Goods which A. deviſed to him*; he cannot ſay, that *A.* did not deviſe. *R.* 1 *Rol.* 873. *l.* 20.

If a Condition be, *that A. and his Wife ſhall appear in B*; he cannot ſay, that he has no Wife. *R.* 1 *Rol.* 873. *l.* 25. *Al.* 13.

If a Condition, reciting *that A. carried* 1200 *Billets to D.* be, *that he ſhall pay ſo much a hundred*; he cannot ſay, that he did not carry 1200. *R. Al.* 52.

If a Leaſe be by Indenture; the Leſſee ſhall be eſtopped to ſay, *No Demiſe.* 1 *Leo.* 156.

If a Leaſe be by Huſband and Wife; after the Death of the Huſband the Leſſee ſhall be eſtopped to ſay, that the Wife had Nothing. *R.* 1 *Rol.* 872. *l.* 45.

So a Man may be eſtopped by any Indenture, or Deed Poll. *Co. L.* 352. *a.*

By an Acquittance or Defeazance by Indenture or Deed Poll. *Co. L.* 352. *a.*

But, if the Condition of a Bond contains a Generality to be done, the Party ſhall not be eſtopped to ſay, that there was not any ſuch Thing; as, if a Condition of a Bond be *to perform all Agreements ſet down by A*; the Obligor may ſay, that no Agreement was ſet down by *A:* for the Condition is general. *R.* 1 *Rol.* 872. *l.* 25.

If a Condition be, *to carry away all the Marle in ſuch a Cloſe*; he may ſay, that there was no Marle there. *R.* 1 *Rol.* 872. *l.* 35.

So, if it be, *to releaſe all his Right in B*; he may ſay, that he has not any Right there. *Per Tanf.d* 1 *Rol.* 872. *l.* 37. *Vide ſupra.*

So a Deed Poll does not eſtop a Leſſee, Grantee, *&c.* for it is the Deed of the Leſſor, Grantor, *&c.* only. *Co. L.* 363. *b.*

### (A. 3.) By Matter *in Pais.*

(A. 3.) By Acceptance of an Eſtate, *&c.*

So a Man may be eſtopped by Matter in *Pais,* which is not in Writing: as, if an Huſband, ſeiſed in Right of his Wife, enfeoffs *A.* who afterwards demiſes to the Huſband and Wife for Life; tho' the Wife be in her Remitter, and *A.* has not any Reverſion, yet in Waſt againſt the Huſband and Wife the Huſband is eſtopped to ſhew ſuch Remitter, againſt his Feoffment and Acceptance of an Eſtate from *A.* tho' it was not in Writing. *Lit. S.* 666, 667.

So, if a Wife brings Dower, and recovers, ſhe ſhall be eſtopped afterwards to claim Land ſettled upon her for her Jointure.

Tho' ſhe had entred clandeſtinely into the Land ſettled for her Jointure, before the Writ of Dower brought. 1 *Rol.* 862. *l.* 20, 25. 4 *Co.* 5.

So a Man may be eſtopped by Acceptance of Rent. *Co. L.* 352. *a.*

So, by Entry, or Livery, *&c.* *Co. L.* 352. *a.*

## (B) Who are bound by an Eſtoppel.

AN Eſtoppel is reciprocal, and binds both Parties. *Co. L.* 352. *a.* (*Vide Cro. El.* 700.)

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All Parties and Privies are bound by an Eſtoppel. *Pol.* 61. *Jon.* 460.

So a Privy in Blood, as the Heir, ſhall be bound by an Eſtoppel. *Co. L.* 352. *a.*

As, if a Contingent Remainder be to *A.* in Fee, who makes a Leaſe by Fine, or Indenture, and then dies before the Contingency happens; his Heir ſhall be eſtopped by the Leaſe. *R. Pol.* 61, 66.

If the eldeſt Son of Tenant in Tail levies a Fine, and then his Father dies, and afterwards he dies without Iſſue; his younger Brother ſhall be eſtopped by the Fine: for he muſt derive his Title as Heir to him. *Pol.* 61.

Tho' there was no Intereſt at the Time of the Eſtoppel created, but the Intereſt accrued afterwards to the Anceſtor. *R. Pol.* 66.

So, a Privy in Eſtate: as, if *A.* demiſes the Manor of *D.* by Indenture, for Years, and afterwards purchaſes the Manor, and ſells it to *B.* The Vendee ſhall be bound by the Eſtoppel to ſay, that *A.* had not any Thing in the Manor at the Time of the Leaſe. 1 *Sal.* 276.

So, if Judgment be in a *Scire facias* upon a Judgment in *Trinity* Term after *Nul tiel Record* pleaded, where in Truth the Judgment was in *Michaelmas* Term; the Party to the Judgment, and all who claim under him, ſhall be bound by this Eſtoppel. *R.* 1 *Sal.* 276.

So, a Privy in Law: as, the Lord by Eſcheat. *Co. L.* 352. *a.*

Every one, who claims under another by Act of Law, or in the *Poſt. Co. L.* 352. *b.*

Tenant in Dower, or, by the Curteſy. *Pol.* 61. *Co. L.* 352. *a.*

So, where the Title of the Plaintiff is made by Eſtoppel, the Court and Jury are bound by it: As, if the Plaintiff in Ejectment makes Title by a Judgment in a *Scire facias* upon a Judgment in *Trinity* Term where it was in *Michaelmas* Term; the Jury cannot find that the original Judgment was in *Michaelmas* Term. *R.* 1 *Sal.* 277.

So, if a Woman ſues, or be ſued, as *Sole*, and Judgment is againſt her as ſuch, tho' ſhe was *Covert*; ſhe ſhall be eſtopped, and the Sheriff ſhall take Advantage of the Eſtoppel. 1 *Sal.* 310. *R.* 1 *Rol.* 869. *l.* 50. *Vide Poſt*, (D.)

If an Executor or Adminiſtrator admits Aſſets, tho' he has them not; the Sheriff may return a *Devaſtavit*. *R.* 1 *Sal.* 310.

## (C) Who not.

BUT, generally, a Stranger ſhall not be bound by, nor take Advantage of an Eſtoppel. *Co. L.* 352. *a.*

So a Woman ſhall not be eſtopped, after Coverture, by an Admiſſion upon Record by her Huſband and her, during Coverture.

As, if Huſband and Wife admit *B.* to be a *Mulier*; in another Action by *B.* after the Death of the Huſband, the Wife may plead, that he is a Baſtard. 1 *Rol.* 865. *l.* 10.

If Huſband and Wife plead a Feoffment; the Wife, after the Death of her Huſband, may ſay, that Nothing paſſed by the Feoffment. 1 *Rol.* 865. *l.* 5.

If Huſband and Wife make a Leaſe, where the Wife has Nothing; after Coverture, ſhe ſhall not claim by Eſtoppel. *Cro. El.* 700. *Vide Poſt*, (F.)

So an Heir, who claims as Heir of his Father, ſhall not be eſtopped by an Eſtoppel upon him as Heir to his Mother: as, if a Woman, who had an Eſtate for Life, recovers in a *Cui in Vitâ* againſt the Donee of her Huſband, ſuppoſing that ſhe had a Fee, and afterwards makes a Feoffment, and dies, and the Donee dies without Iſſue; the Heir of the Father ſhall recover againſt the Feoffee of the Mother, tho' Heir alſo to her, and ſhall not be eſtopped by the Record of the Judgment in the *Cui in Vitâ*, which affirmed the Mother to have a Fee. *Co. L.* 365. *b.*

So, if a Son be eſtopped by his Pleading upon Record, and dies, his Uncle and Heir ſhall be bound; but if he dies, and the Land deſcends to the Father, he ſhall not be bound by the Eſtoppel of his Son; for he cannot be Heir to him. *Co. L.* 12. *a.*

So, if the Heir does not claim the Land from him who made the Eſtoppel, but by his own Purchaſe, or by another Anceſtor, he ſhall not be bound by the Eſtoppel. *Jon.* 460.

Tho' he derives his Blood from the Party to the Eſtoppel. *Jon.* 460, 1.

So, if the Plaintiff does not rely upon the Eſtoppel, the Court and Jury ſhall not be bound by it; but the Jury may find the Matter at Large, and the Court ſhall give Judgment accordingly: as, in Debt for Rent upon a Leaſe by Indenture, if the Defendant pleads *Nil habuit in Tenementis*, and the Plaintiff replies, *quod habuit*. 1 *Sal.* 277. *Vide Pleader*, (S. 5.)

## (D) Who ſhall take Advantage of an Eſtoppel.

EVERY one, who claims under an Eſtoppel ſhall take Advantage of the Eſtoppel: as, a Woman, who claims Dower, ſhall take Advantage of an Eſtoppel by Deed between her Huſband and his Tenant. 1 *Rol.* 868. *l.* 47.

If *A.* demiſes by Indenture to *B.* for Life, and afterwards by Fine grants the Reverſion; the Conuſee ſhall eſtop *B.* in a *Quid Juris Clamat*, to ſay that *A.* had Nothing. 1 *Rol.* 868. *l.* 50.

If a Man recovers a Rent-Charge againſt *B.* out of his Land, who afterwards ſells the Land to another; the Vendee ſhall be eſtopped by the Recovery, and the Recoveror ſhall take Advantage of it. 1 *Rol.* 868. *l. ult.*

So an Officer, in the Execution of Proceſs, ſhall take Advantage of an Eſtoppel upon Record in the ſame Action: as, if a *Feme Covert* be ſued as a *Feme Sole*; the Sheriff ſhall take her in Execution, tho' ſhe be the Wife of another, and hath another Name. *R.* 1 *Rol.* 869. *l.* 50. *Vide Ante*, (B.)

If a Man be ſued as a Knight and Baronet, tho' he be not a Baronet, and the Sheriff takes him in Execution; he ſhall not have an Action againſt the Sheriff. *R.* 1 *Rol.* 869. *l.* 45.

So the King ſhall take Advantage of an Eſtoppel, tho' he be not Party to the Record; for he is always preſent in Court. 2 *Inſt.* 39.

So, every Perſon ſhall take Advantage of a Diſability, which appears by Record; as, Outlawry, Excommunication, Attainder, *&c.* tho' a Stranger to the Record. *Co. L.* 352. *b.* 128. *b.*

So, of Baſtardy, Mulierty, certified, *&c.* *Co. L.* 352. *b.*

But a Stranger ſhall not take Advantage of the *Miſnoſmer* of any One upon Record; for he is not bound by it. *Co. L.* 352. *b.*

So a Stranger ſhall not have Advantage of *Villenage* confeſſed, or found; but the Lord only. *Co. L.* 128. *b.*

## (E) What ſhall not be an Eſtoppel.

### (E. 1.) A Record *coram non Judice.*

BUT a Man ſhall not be eſtopped by a Record, which was *coram non Judice:* as, by a Record of an Action in the Marſhalſea, where neither Party was of the King's Houſehold. 1 *Rol.* 863. *l.* 50.

Nor, by the Record of a *Formedon* ſued in *B. B.* 1 *Rol.* 863. *l. ult.*

(E. 2.)

## (E. 2.) Where the Truth appears by the ſame Record.

So a Man ſhall not be eſtopped, where the Truth appears by the ſame Record. *Co. L.* 352. *b.*

As, if a Fine be levied, or Concord made upon an Original upon which a *Retraxit* is entred; tho' the Parties are eſtopped to ſay, when the Fine is pleaded, that it was not upon an Original (for it ſhall be intended well levied, till reverſed by Error) yet, if by the ſame Record it appears that a *Retraxit* was entred upon the Original, then the Parties are not eſtopped to ſay it; for it appears by the Record itſelf. *Co. L.* 352. *b.*

If an Impropriation be to a Biſhop of a Rectory after the Death of the Incumbent; and by Indenture, ſhewing that Matter, the Biſhop demiſes the Rectory for Years in the Life of the Incumbent, and the Leaſe is confirmed by the Dean and Chapter; the Biſhop is not eſtopped by the Indenture of Demiſe: for it appears by the ſame Deed that he then had Nothing in the Rectory. *Co. L.* 352. *b.*

## (E. 3.) Where the Thing is conſiſtent with the Record.

So a Man ſhall not be eſtopped to aver a Thing conſiſtent with the Record, Writing, *&c.* as, if *A. B. Senior* and *A. B. Junior* are bound by an Obligation, that *the ſaid A. B. ſhall not reſort to ſuch a Woman, &c.* it may be averred, that *A. B. Junior* was intended. *Semb.* 3 *Mod.* 216.

If a Deed, Releaſe, *&c.* be inrolled upon Record, the Defendant may plead, that *Nothing paſſed by the Deed*, or, *Not ſeiſed at the Time, &c.* for theſe Pleas are conſiſtent with the Record. 1 *Rol.* 862. *l.* 35.

So, if an Obligor, being warned in *Detinue* brought for the Obligation itſelf, pleads *Conditions not performed*; he may afterwards plead, to Debt againſt him upon the Obligation, a ſpecial *Non eſt Factum*. *Semb.* 1 *Rol.* 862. *l.* 45, 50.

If a Man purchaſes a Charter for Licence to alien his Land; he may afterwards traverſe the Tenure of the King. 1 *Rol.* 864. *l.* 3.

If *A.* demiſes two Cloſes called *Lane's Meadows*, the Leſſee ſhall not be eſtopped to ſay, that they are Arable, and not Meadow. *R.* 2 *Mod. Ca.* 312.

## (E. 4.) Where the Allegation is uncertain.

So an Eſtoppel ought to be certain to every Intent. *Co. L.* 352. *b.* 303. *a.*

And therefore, if a Thing be not directly and preciſely alledged, it ſhall not be an Eſtoppel. *Co. L.* 352. *b.*

As, if a Defendant pleads, *within Age, viz. ætatis* 14 *& non amplius*, and after Judgment, brings Error within 7 Years, and aſſigns Error by Attorny, he ſhall not be eſtopped to ſay that he was of full Age at the Time of the Error aſſigned; for the Allegation after the *viz.* that *fuit ætatis* 14 *& non amplius*, is not poſitive. *R.* 2 *Jon.* 170. *(Vide Ray.* 456.)

So, if a Man pleads a Licence or Pardon of Alienation, he is not thereby eſtopped to ſay, that he does not hold *in Capite* upon another Alienation: for the Licence ſays, *quæ tenentur de nobis in Capite, ut dicitur*, and the Plea is not more poſitive. 4 *Inſt.* 111.

So, if it be alledged by Way of Argument, or Inference. *Co. L.* 352. *b. Pol.* 396.

So, if it be by Way of Recital. *Co. L.* 352. *b.*

(E. 5.)

## (E. 5.) Or only a Suppoſal.

So, if a Thing be alledged only as a Suppoſal in a Count, it ſhall not be an Eſtoppel. *Co. L.* 352. *b.* *Vide Ante*, (A. 1.)

As, if in a *Scire facias* upon a Fine, the Plaintiff makes himſelf Heir by lineal Deſcent, he may vary in his Deſcent in a ſecond *Scire facias* if the firſt was miſtaken. 1 *Rol.* 864. *l.* 27.

## (E. 6.) If it is not traverſable, or material.

So, if the Thing alledged be not traverſable, or material, it ſhall not be an Eſtoppel. *Co. L.* 352. *b.*

As, in Debt upon an Obligation alledged to be made at *A*; In another Action upon the ſame Obligation, he may ſay that it was made at *B*. 1 *Rol.* 864. *l.* 25.

If in Error upon a Judgment 20 *Car.* 2. it be aſſigned for Error, that the Defendant was within Age, *viz. ætatis* 14 *Annorum*; tho' the Error was aſſigned 26 *Car.* 2. and in both Caſes the Defendant appears by Attorny, the Judgment ſhall be reverſed: for the material Part of the Plea is, that he was within Age, and the Words after the *Viz.* 14 *Annorum* do not conclude him to be now within Age. *R. Ray.* 456. (*Vide* 2 *Jon.* 170.)

So, if upon a Diſtreſs for Rent, the Tenant prays in Aid, alledging that he has a Leaſe for ten Years; he is not eſtopped afterwards to ſay, that he has a Leaſe for 60 Years; for in *Aide prier* it is not material, for what Term, if he be a Leſſee. *Ray.* 457.

In *Reſcous* upon a Diſtreſs for Rent, out of a Houſe and one Acre, the Plaintiff ſhall not be eſtopped, becauſe he at another Time avowed for the ſame Rent iſſuing out of a Houſe and five Acres. *Ray.* 457.

So, if *A.* claims by a Deed to *B.* and *C.* and the Heirs of their Bodies, Remainder to *D.* and that upon the Death of *C.* without Iſſue *B.* aliened to *A.* and *D.* entred, and Iſſue is joined that at the Entry of *D.* *C.* was alive, and this is found by Verdict; after the Death of *C.* *D.* may plead that Nothing paſſed by the Deed, and ſhall not be eſtopped. *Ray.* 457.

## (E. 7.) So an Eſtoppel may be avoided where an Act *in Pais* is done by him, who had not Power to do it.

So Acceptance of Rent, *&c.* by him, who then had no Title, ſhall not be an Eſtoppel. *Co. L.* 352. *b.*

## (E. 8.) If an Intereſt paſſes, tho' not *pro tanto.*

So, if any Intereſt paſſes from the Party, there ſhall be no Eſtoppel: as, if *A.* be Tenant for Life, Remainder to *B.* in Fee, and *A.* and *B.* join in a Leaſe, if the Leſſee brings an Ejectment upon the Demiſe of both, in the Life of *A.* he ſhall not recover; for it was only the Demiſe of *A.* and the Indenture ſhall not be an Eſtoppel to them; for an Intereſt paſſed from both. *Co. L.* 45. *a.*

If Leſſee for the Life of *B.* leaſes for 21 Years, and afterwards purchaſes the Fee, and *B.* dies; he ſhall avoid his Leaſe for Years tho' it was by Indenture; becauſe an Intereſt paſſed by his Leaſe for the Life of *B.* *Co. L.* 47. *b.* *Mo.* 20.

If *A.* demiſes to *B.* the Herbage of his own Land by Indenture; *B.* is not eſtopped to ſay, that *A.* had Nothing in the Land: becauſe the Leaſe was not of the Land. *Co. L.* 47. *b.*

## (E. 9.) If there be an Eſtoppel againſt an Eſtoppel.

So an Eſtoppel againſt an Eſtoppel ſets the Matter at Large: as, if *A.* claims Common by Grant, and, in another Action againſt the ſame Defendant, claims it by Preſcription, and the Defendant admits it; *A.* who was eſtopped by his former Claim to alledge Preſcription, by the Admiſſion of the Defendant ſhall be now at Liberty to do it. 1 *Rol.* 874. *l.* 50.

So, if a Defendant pleads Joint-tenancy with *B.* and the Plaintiff traverſes that he is ſole Tenant; the Defendant may vouch as ſole Tenant: for the Plaintiff is eſtopped to gainſay it. 1 *Rol.* 875. *l.* 5.

## (E. 10.) If the Truth be found by Verdict.

So, if the Jury finds the Truth of the Fact, the Court will give Judgment accordingly, without Regard to the Eſtoppel. *Vide Ante*, (C.)—*Pleader*, (S. 5.)

And therefore, if a Leaſe be by Indenture by *A.* to *B.* and afterwards *B.* brings an Ejectment for Lands demiſed againſt *A.* and upon *Not guilty* the Jury find that *A.* having Nothing in the Land demiſed to *B.* by Indenture *prout*; there ſhall not be Judgment for *B.* *Dub. Sav.* 99.

If by Confeſſion in a Court of Record, by Livery ſued, *&c.* Tenant in Tail be eſtopped to ſay, that he does not hold of the King; upon a *Diem clauſit extremum* the Jury ſhall find the Truth, and thereby the Heir ſhall be relieved. 1 *H.* 4. 5. *b.*

But where an Eſtoppel binds the Eſtate, and converts it to an Intereſt, the Court will adjudge accordingly; as, if *A.* leaſes Land to *B.* for ſix Years, in which he has Nothing, and then purchaſes a Leaſe of the ſame Land for 21 Years, and afterwards leaſes to *C.* for ten Years, and all this is found by Verdict; the Court will adjudge the Leaſe to *B.* good, tho' it was ſo only by Concluſion.

So, if *A.* leaſes for Years, having only a Contingent Remainder not veſted, and after the Contingency levies a Fine to *B.* in Fee, and the whole is found by Verdict; the Leaſe for Years ſhall be adjudged good. *R. Pol.* 68.

So, if *A.* be diſſeiſed, and during the *Diſſeiſin* a Common Recovery is had againſt him as Tenant, to the Uſe of *B.* Tho' the Recovery was void for Want of a good Tenant to the *Præcipe*, it ſhall be good by Eſtoppel againſt *A.* his Heirs and Aſſigns. *R. upon a ſpecial Verdict.* 1 *Rol.* 865. *l.* 15. *Cro. Car.* 389. 1 *Rol.* 868. *l.* 35.

## (F) When an Eſtoppel determines.

SO an Eſtoppel determines by *Ceſſer* of the Act, Deed, *&c.* which made the Eſtoppel; as, if a Man takes a Leaſe for Years by Indenture of his own Land; if the Leaſe determines, it ſhall be a Determination of the Eſtoppel. *Co. L.* 47. *b.*

If *A.* accepts a Leaſe from *B.* and his Wife, where the Wife has Nothing; after the Death of the Huſband, the Eſtoppel ceaſes, and *that ſhe had Nothing* may be pleaded in Bar of an Action by the Wife. *R. Cro. El.* 700. *Vide Ante*, (C.)

Estovers. Le Estate E. 3.



# ESTRAY.

*Vide Waife*, (F.)

# ESTREAT.

*Vide Prærogative*, (D. 57, 59.)

# ESTREPEMENT.

*Vide Waſt*, (B. 2.)

# EVESQUE.

*Vide Certificate*, (A. 1, &c.)—*Eccleſiaſtical Perſons*, (C. 2.)—*Eſgliſe*, (H. 11, 13.)—*Ireland*, (E.)—*Pleader*, (3 I. 9, 12.)—*Viſitor*, (A. 8.)

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# EVIDENCE.

## (A. 1.) What Things are allowed for Evidence; Matters of Record.

EVIDENCE imports Matters of Record; as Letters Patent, Fines, Recoveries, *&c.* Writings under, or without Seal; as Charters, Deeds, Court-Rolls, Accounts, *&c.* Teſtimony of Witneſſes, and other Proof given to a Jury. *Co. L.* 282. *a.*

And therefore, Letters Patent may be produced in Evidence.

A Fine, or Common Recovery.

A Judgment, Statute, Recognizance, or other Matter of Record.

So, a Judgment and Recovery in *Wales*, in a *Quod ei deforceat*. *R. Hard.* 118.

Letters Patent of Land in a County Palatine under the Seal of the Dutchy. 4 *Inſt.* 209.

So, the Pope's Bull. *Vide Poſt*, (A. 2.)

So, by the *St.* 29 *Car.* 2. 8. A Grant of Augmentation to a Vicarage, regiſtred, examined, and atteſted by the Biſhop, *&c.* is a Record.

## (A. 2.) What ſhall be ſufficient Proof.

If the Record itſelf be produced, it ſhall be read without other Proof. (A. 2.) The Record, or Exemplification.

So Letters Patent under the Great Seal ſhall be read without other Proof.

So, by the *St.* 3 (or 3 & 4) *Ed.* 6. 4. and 13 *El.* 6. Patentees and All claiming under them may make Title, *&c.* by ſhewing the Exemplification, or *Conſtat* of the Roll.

And

And theſe Statutes extend to all the King's Patents which concern Land, Privilege, or other Thing, granted to a Subject, Corporation, or any other. *R.* 5 *Co.* 53.

So the Chirograph of a Fine is ſufficient, without other Proof. *Pl. Com. Com.* 409. *b.*

Or the Exemplification of a Fine.

So the Exemplification of a Common Recovery under Seal is ſufficient, without more.

So an Exemplification of a Recovery in an inferior Court of Record under the Town-Seal; where the Records are conſumed. *Hard.* 120. *per Hale*, 1 *Mod.* 117.

So, an Exemplification of a Recovery in *Antient Demeſne*, being old, if the Records are loſt. *R.* 1 *Mod.* 117.

And, by the *St.* 27 *El.* 9. The Exemplification of a Recovery in *Wales*, or a County-Palatine, ſhall be of the ſame Validity to all Intents as the original Record.

So an Exemplification of any Record under the Great Seal, or Seal of the Court, is ſufficient. 10 *Co.* 93. *a.*

So, an Exemplification of a Record in *Wales* or a County-Palatine, under the Seal of the Court there. *Semb. Hard.* 120.

So, an Exemplification of the Pope's Bull, under the Seal of the Biſhop, ſhall be allowed. *R. Hard.* 118.

(A. 3.) A Copy, or Witneſſes, &c.

So a Record may be proved by a Copy examined with the Original: for a Razure or Interlineation ſhall not be preſumed. 10 *Co.* 92. *b.* 2 *Rol.* 678. *l.* 45.

Tho' it be a Record in *Wales*, &c. it may be proved by an examined Copy. *R. Hard.* 119.

So a Copy of a Common Recovery is ſufficient, without proving a Tenant to the *Præcipe*; for it ſhall be intended well ſuffered, if the contrary does not appear. 2 *Cro.* 455. *Lut.* 1549. 1 *Mod.* 117.

Tho' it be a Recovery of a Reverſion, if it be antient, and the Poſſeſſion accordingly; for a Surrender ſhall be intended. 1 *Vent.* 257.

So, if a Record be loſt or conſumed by Fire, it may be proved by collateral Evidence: as, in Ejectment for a Rectory, to which a Recuſant preſented, the Record of Conviction, being burnt, may be proved by the Eſtreats in the *Exchequer*. *R. Hard.* 323. 1 *Sal.* 285.

So, if *Appropriation or not* be the Iſſue, the King's Licence, being loſt, may be proved by other Evidence; for it is not directly the Point in Iſſue. *R. Hard.* 323.

So, in *Trover*, if a *Fieri facias*, or *Venditioni exponas*, &c. be loſt. *R. Hard.* 323. *Al.* 18.

So a Recovery in *Antient Demeſne*, being loſt, and the Roll not found may be proved by Witneſſes, where the Poſſeſſion has gone accordingly. 1 *Vent.* 257.

So a Record may be explained by Witneſſes: as, what Manor, Perſon, &c. was intended, where there are ſeveral of the ſame Name. *Pl. Com.* 85. *b.*

## (A. 4.) What Proof is not ſufficient.

But, regularly, a Record is of ſo high a Nature, that it cannot be proved but by the Record itſelf, or an Exemplification, or Copy thereof. 10 *Co.* 92. *b.*

So

So the whole Record, which concerns the Matter in Queſtion, ought to be produced.

So Evidence to prove a Record, which is loſt or conſumed, ought to be full and cogent. *Hard.* 324.

And therefore, a Warrant for a *Diem Clauſit extremum* and an Entry in the Docket-Book, is not ſufficient Proof of ſuch Writ. *Hard.* 120.

So an Eſtreat in the *Exchequer* and an Inquiſition upon it, is no Proof of a Conviction, where the Eſtreat ſuppoſes it at the ſame Aſſiſes at which the Preſentment of Recuſancy was made: for by the *St.* 23 *El.* 1 & 29 *El.* 6. Proclamation ſhall be at the Aſſiſes, when indicted, to render himſelf before the next Aſſiſes, and therefore he cannot be convicted at the ſame Aſſiſes. *R. Hard.* 323.

So, if a Recovery of a Reverſion was ſuffered but 10 or 12 Years paſt, a Surrender to make a Tenant to the *Præcipe* ought to be proved.

So, if there be probable Evidence of an Eſtate for Life *in Eſſe* in another; as, a Leaſe, or Mortgage by him. *R.* 5 *Mod.* 211.

## (A. 5.) A Verdict, Nonſuit, &c.

(A. 5.) When it ſhall be allowed.

So a Verdict in another Action for the Cauſe, ſhall be allowed in Evidence between the ſame Parties.

Tho' Judgment was afterwards arreſted for Want of Form. 2 *Rol.* 46.

So it ſhall be Evidence, where the Verdict was for one, under whom any of the preſent Parties claim.

So a Verdict for or againſt a Leſſee, ſhall be Evidence for or againſt him in Reverſion. *Per Holt*, 6 *An. Hard.* 472.

So a Verdict for him in Remainder ſhall be Evidence for a ſubſequent Remainder-Man in the ſame Deed; for tho' he does not claim under him for whom the Verdict was, yet he claims by the ſame Deed. *R.* 8 *W.* 3. *B. R.* (1 *Ld. Ray.* 730.)

So a Verdict for or againſt a Plaintiff, with Proof of the Evidence by him given, ſhall be Evidence in an Action by another againſt him for the ſame Thing: As, in an Action by a Common Carrier for Goods delivered by Miſtake, a Verdict for or againſt the Plaintiff, with the Proof by him given, ſhall be Evidence in an Action by the Owner againſt the Carrier for the ſame Goods. *Per Holt*, at *Guildhall*, 14 *W.* 3.

So a Nonſuit, with Proof of Evidence then given, ſhall be allowed as Evidence againſt him in another Action by the ſame Plaintiff. *R.* 5 *An. in C. B.*

So, if the Jury are agreed, and afterwards diſcharged before the Verdict given and recorded, it ſhall be allowed for Evidence, that the Jury were agreed, in the Caſe of a Common Perſon. *R.* 2 *Rol.* 680. *l.* 5.

(A. 6.) What ſhall be ſufficient Proof.

If a Verdict be offered in Evidence, it ought to be proved by an Exemplification of the Verdict, and Judgment upon it. (*Vide Hard.* 118, &c.)

## (B. 1.) A Charter or Deed, under Seal.

SO any Charter, or Deed under Seal of the Party, ſhall be allowed for Evidence.

So a Deed inrolled by Conſent of one Party only, ſhall be Evidence againſt him, and all who claim under him. 3 *Lev.* 388.

So a Deed which begins, *This Indenture*, ſhall be Evidence tho' it be not an Indenture. *Per Hale*, at *Norfolk* Aſſiſes 1668.

So a Deed ſhall be Evidence, tho' by Accident, &c. the Seal be broken, or torn off. *Pal.* 403. 1 *Mod.* 211. *Per B. R.* 12 *W.* 3. *inter Sir M. Dayrel and Glaſcock.*

Tho' cancelled by Practice. (*Vide* 1 *Vent.* 297.)

So a Counterpart, where it is proved that there was an Original, and that cannot be had. (*Vide* 1 *Sal.* 287.)

## (B. 2.) When allowed, without Proof.

An Antient Deed dated 40 Years paſt ſhall be read, without other Proof.

So a Deed, indorſed, as inrolled, ſhall be read, without Proof. *R. P.* 6 *W. & M. in B. R.* 1 *Sal.* 281.

Tho' there was no Need of an Inrolment to make ſuch Deed effectual. 1 *Vent.* 296. 3 *Lev.* 388. 1 *Sal.* 280.

So, the Counterpart of a Deed to declare the Uſes of a Fine. *Mod. Ca.* 225. 1 *Sal.* 287.

## (B. 3.) When Proof is neceſſary.

But, regularly, a Deed ſhall not be given in Evidence, without Proof of the Execution. 10 *Co.* 93. *a.*

Proof of the Execution ought to be by one of the Witneſſes at leaſt.

Or, if it be proved, that they are all dead, or upon ſtrict Inquiry cannot be diſcovered to be alive, by Proof that the Name of any one indorſed is the Writing of the ſame Perſon. *Per Holt*, 5 *An.*

Or, that the Name of the Party, who executed it, is his proper hand-Writing.

Or, by any one preſent at the Execution of the Deed, tho' he be not indorſed as a Witneſs.

## (B. 4.) When the Deed itſelf.

So, regularly, the Deed itſelf ought to be produced, whereby it may appear to the Court that it is not raſed or interlined. 10 *Co.* 92. *b.*

And therefore, generally, a Copy of a Deed ſhall not be allowed for Evidence, tho' examined and atteſted. 10 *Co.* 92. *b.*

Tho' wrote by Counſel as a true Copy, and delivered to the Party as ſuch. 1 *Mod.* 94.

So Proof of the Contents by Witneſſes ſhall not be allowed. 10 *Co.* 92. *b.*

Nor a Counterpart, without Circumſtances which induce Credit that there was an Original. *R.* 1 *Sal.* 287.

But a Counterpart has been allowed, where the Original cannot be found, and there is probable Proof that there was an Original: as, a Counterpart of a Leaſe, where the Leſſor himſelf acknowledged that he made a Leaſe, of which this was a Counterpart. *Per C. B.* 6 *An. inter A. and Whitcomb.*

So, a Counterpart of a Leaſe, found by the Heir of the Leſſor among the Writings of the Anceſtor. 1 *Lev.* 25.

Tho' no Witneſs be indorſed. 1 *Lev.* 25.

So, if it be proved that the Original was aſſigned to the Defendant, or another under whom he claims. *Per Tracy*, 6 *An.*

Or that the Original is deſtroyed or loſt. *R. Mod. Ca.* 225.

So, if a Deed be deſtroyed or loſt, a Copy may be allowed. 10 *Co.* 92. *b.*

Tho' not examined; if it was written for a true Copy. 1 *Mod.* 4.

So Proof of the Contents by Witneſſes may be allowed in ſuch Caſe. 10 *Co.* 92. *b.*

So a Copy, or Proof of the Contents has been allowed when a Deed was imbeziled, or detained by the other Party. 1 *Keb.* 12. 3 *Keb.* 2.

### (B. 5.) A Recital, when Evidence.

So a Recital in a Deed may be Evidence, againſt him who executed, or claims under the Party, who by ſuch Recital is eſtopped: as, the Date ſhall be Evidence that it was executed the ſame Day. *Per Holt.* (*Vide* 1 *Sal.* 286.)

A Recital of a Jointure to *A.* that there was a Jointure to her. *Per Tracy*, 7 *An.*

So a Recital of a Deed is Evidence of it, where the Deed recited is loſt. *R. Mod. Ca.* 45.

So a Recital of a Leaſe for a Year in a Releaſe ſhall be Proof that there was ſuch Leaſe, if Poſſeſſion has been accordingly for ſeveral Years. *Per Gould*, 12 *W.* 3. *at Hertford.* *R.* 2 *An.* 1 *Sal.* 286. *Mod. Ca.* 44.

But a Recital, generally, is no Proof of the Deed recited: as, if a Patent or Leaſe be recited, the Patent or Leaſe ought to be proved. *R. Hard.* 120. *Semb. Vau.* 74. *R.* 2 *Lev.* 108.

So, if a Patent be recited to be ſurrendred, and the Patent be proved by one Party as *in Eſſe*, the other ought to prove the Surrender. 2 *Rol.* 678. *l.* 40. *R.* 2 *Vent.* 171.

Yet, if the one relies upon the Recital as Proof of the Patent, it ſhall be alſo Proof of the Surrender. *R.* 2 *Vent.* 171.

So a Recital of a *Levari*, or other Record, in a Record, is no Proof of the *Levari*, *&c.* *Per Hale*, 23 *Car.* 2. *Sir P. Pindar*; if the Record of the *Levari* is not loſt.

So a Recital of a Leaſe in a Releaſe, is no Proof againſt a Stranger, without ſhewing that the Leaſe is loſt. *R.* 1 *Sal.* 286.

Nor a Recital of a Deed for the Uſes of a Fine, without Proof that there was a Deed of Uſes. *Mod. Ca.* 45.

## (C) Writings without Seal.

### (C. 1.) Proceedings in Courts.

(C. 1.) A Decree, Sentence, *&c.*

SO Writings without Seal are oftentimes Evidence.

As, all Proceedings in Courts of Juſtice.

And therefore, a Decree in the Court of *Chancery*, or *Exchequer* ſhall be Evidence againſt the Party, if an Exemplification of it be produced under the Seal of the Court. 1 *Keb.* 21. 2 *Mod.* 231.

Or a Decretal Order in Paper, with Proof of the Bill and Anſwer. 1 *Keb.* 21.

So, if the Bill and Anſwer be recited, it is ſufficient. *Cont.* 1 *Keb.* 21. *Semb. per Trevor at Guildhall*, 9 *An. inter Wheeler and Lowth.*

But a Decree, which does not recite the Bill and Anſwer, ſhall not be allowed. *Per Cur'*, *Twiſd. cont.* 1 *Keb.* 21.

So a Sentence in the Spiritual Court, in a Matter within their Cognizance, ſhall be Evidence of the Right to the Thing there decreed: as, a Sentence for Tithes. *R.* 2 *Rol.* 679. *l.* 25. 2 *Mod.* 231.

So, a Sentence in the Admiralty, which condemns Goods as piratical, in *Trover* for the ſame Goods, upon the Libel and Anſwer produced. *Per Trevor*, 9 *Ann. inter Wheeler and Lowth.*

Or

Or without producing the Libel, if it be not found in the Office, nor uſually filed there. *Per Trevor ibidem.*

So, a Probate of a Teſtament for Perſonal Eſtate, and a Grant of Adminiſtration.

So, a Judgment in a Court-Baron, Hundred, or County-Court, with Proof of the Proceedings upon which the Judgment was given.

(C. 2.) A Bill.

So a Bill in *Chancery*, or *Exchequer* ſhall be Evidence againſt the Plaintiff himſelf, if it was exhibited with his Privity. 1 *Sid.* 221. *R. Ca. Ch.* 65.

And if there was an Anſwer, and other Proceeding upon it. *Ca. Ch.* 65. 1 *Sid.* 221.

And the Proceedings upon a Bill import *primâ facie* that it was with his Privity. *Per Tracy*, 5 *An.*

(C. 3.) An Anſwer. *Vide Chancery*, (T. 6.)

So an Anſwer, by any in *Chancery* in his own Right, ſhall be Evidence againſt himſelf, with Proof of the Bill filed. *Godb.* 326.

So an Anſwer to Interrogatories is Evidence againſt himſelf.

So, an Anſwer to a Libel in the Spiritual Court; for it is tantamount to a Confeſſion. *Per Tracy*, 6 *Ann.*—1 *Ver.* 53.

But an Anſwer by Guardian ſhall not be Evidence againſt the Infant. *R.* 2 *Vent.* 72. 3 *Mod.* 259.

Nor an Anſwer of a Truſtee againſt the *Ceſtuy que Truſt.* 1 *Keb.* 281.

Nor the Anſwer of a Vendor againſt an Alienee. 1 *Sal.* 286. *Mod. Ca.* 44.

If an Anſwer be read in Part againſt him, he may inſiſt that the whole ſhall be read. *R.* 5 *Mod.* 10.

(C. 4.) A Depoſition. *Vide Chancery*, (T. 4. 5.)

So a Depoſition, regularly taken upon a Bill and Anſwer in *Chancery*, ſhall be Evidence againſt the Party to the Suit or any who claim under him, if the Bill and Anſwer are proved to be filed. 1 *Keb.* 685. 4 *Mod.* 146. 1 *Sal.* 279.

Tho' the Bill was diſmiſſed for Want of Equity. *Ca. Ch.* 175. *Per Holt*, 7 *W.* 3.

So, if it be proved that a Bill and Anſwer were filed, by the Six Clerks Book, by mentioning them in the Inrolment of the Decree, it is ſufficient, tho' they are now loſt. *R.* 5 *Mod.* 211.

So an Exemplification of an antient Depoſition was allowed where the Records were burnt, tho' the Bill and Anſwer were not recited; for the Recital was not uſual before 1630. 2 *Keb.* 31.

But a Depoſition ſhall not be Evidence at Law, except where the Witneſs is dead. 1 *Sal.* 286.

Or cannot attend by Reaſon of Sickneſs, or cannot be found. *Sho.* 363.

Tho' the Witneſs afterwards becomes intereſted, whereby he is diſabled to be a Witneſs. *R.* 2 *An.* 1 *Sal.* 286. *

*[*Vide* 2 *Ver.* 700. 1 *P. W.* 288, &c. 1 *Str.* 101.]

Nor againſt him, who is no Party to the Suit, nor claims under one. *Hob.* 112. 2 *Rol.* 679. *l.* 35.

Nor for a Stranger, againſt a Party to the Suit: for, not being Evidence againſt him, it ſhall not be allowed for him. *R. Hard.* 472.

Nor for a Stranger to the Suit againſt a Purchaſer under the Party; tho' the Cauſe there was of the ſame Nature as now. *Hard.* 22.

So it ſhall not be Evidence, if the Bill was diſmiſs'd for Irregularity. *R. Ca. Ch.* 175.

If taken *ex Parte*, without Anſwer to the Bill. 2 *Jon.* 164.

Tho' the Bill was *ad examinandum in perpetuam Rei Memoriam.* *R. Rep.* 336. *Dub.* 1 *Sal.* 279. *Sho.* 363.

Demurrer

### Demurrer to Evidence.

*Vide Pleader*, (Q. 10.)

*Vide* more concerning Evidence, in Title *Teſtmoigne.*

## EXACTION.

*Vide Extortion.—Officer*, (G. 15.—H.)

## EXAMINATION.

*Vide Bankrupt*, (D. 6, &c.)—*Chancery*, (P. 1, &c.)—*Trial*, (B. 4, 5.)

### Examination in perpetuam Rei memoriam.

*Vide Chancery*, (R.)

## EXAMINER.

*Vide Chancery*, (P. 1, &c.)

## EXCEPTION.

### Exceptions to an Anſwer.

*Vide Chancery*, (L.)

### Exceptions to a Maſter's Report.

*Vide Chancery*, (W. 3.)

### Exception in a Deed.

*Vide Fait*, (E. 5, &c.)

### Exception in a Deviſe.

*Vide Deviſe*, (N. 23.)

### Exception in a Pardon.

*Vide Pardon*, (I.)

# EXCHANGE.

## (A) Exchange.

### (A. 1.) What ſhall be a good one.

AN Exchange is, when a Man gives Lands and Tenements to another in Exchange for other Lands or Tenements of an equal Quantity in Eſtate with that given to him. *Co. L.* 50.

And to ſuch Exchange the Word, *Excambium*, is requiſite; for it cannot be ſupplied by any *Periphraſis*, or Circumlocution. *Co. L.* 50. *b.*

So an Exchange may be made of Things in Grant; as, an Advowſon, Rent, Common, *&c.* *Co. L.* 50. *a.*

So, of a Thing in Grant, for Land: as, a Rent.

Tho' it be a Rent created *de novo*. *Co. L.* 50. *b.*

So a Releaſe of a Rent, *Eſtovers*, or a Right to Land, *&c.* ſhall be good in Exchange for Land: for their needs not any Tranſmutation of Poſſeſſion. *Co. L.* 50. *b.*

So Tithes, for Land. *Co. L.* 50. *b.*

A Tenure by Divine Service, for a Temporal Seigniory. *Co. L.* 50. *b.*

An Exchange ſhall be good, tho' the Eſtates are not equal in Value. *Lit. S.* 65.

So two Joint-tenants may exchange their Lands, for Lands to them in Jointure, or in Common. *Co. L.* 51. *a.*

An Exchange of Lands, both being in the ſame County, ſhall be good without Deed. *Co. L.* 50. * [*Vide* the *St.* 29 *Car.* 2. 3.]

### (A. 2.) When it ſhall not be good.

But an Exchange is not good, without the Word, *Excambium*. *Co. L.* 50. *b.*

So an Exchange will not be good, if it be not of Eſtates equal in their Extent and Duration: for, if Land in Tail be given in Exchange for Land in Fee, it will be void. *Lit. S.* 64.

Or, an Eſtate Tail, for an Eſtate for Life. *Lit. S.* 65.

Or an Eſtate in Tail General, for an Eſtate in Tail Special. *Lit. S.* 65.

So, it will not be good without Deed, if the Land of either Party lies in a different County. *Co. L.* 50. *a.*

Or, if it be made of Things which lie in Grant. *Co. L.* 50. *a.* * [*Vide* the *St.* 29 *Car.* 2. 3.]

So an Exchange is not perfect, till it be executed by Entry. *Co. L.* 50.

And therefore, if one of the Parties dies before Entry, the Exchange ſhall be void; for the Heir cannot enter. *Co. L.* 50. *b.*

*Vide* more concerning Exchange, in *Chancery*, (3 H.)—*Enfant*, (B. 3.)

## Bill of Exchange.

*Vide Action upon the Caſe upon Aſſumpſit*, (A. 2.)—*Merchant*, (F. 4. &c.)

# EXCHEQUER.

*Vide Courts*, (D. 1, &c.)—*Diſmes*, (M. 13, &c.)—*Pleader*, (3 B. 4.)—*Scotland*, (D. 14.)

## Exchequer Chamber.

*Vide Courts*, (D. 5, &c.)—*Pleader*, (3 B. 5.)

## Exchequer Seal.

*Vide Patent*, (C. 3.)

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# EXCOMMENGEMENT.

## (A) Excommunication.

### (A. 1.) What Effect it ſhall have.

EXCOMMUNICATION is, when a Man by Sentence of the Ordinary is deprived of Communion with the Church of God.

And there is a *Major*, or a *Minor* Excommunication: By the *Minor* he is deprived only of Participation of the Sacraments. *Co. L.* 133. *b.*

By the *Major* Excommucication he ſhall be deprived *de fidelium Communione & ab omni Actu legitimo*. *Co. L.* 133. *b.*

*Cum excommunicato nec orare, nec loqui palam aut abſcondité, nec veſci licet.* *Co. L.* 133. *b.*

And therefore, if a Plaintiff ſue an Action Real, Perſonal, or Mixt, it is a good Plea in Diſability of his Perſon, *that he is excommunicated*. *Lit. S.* 201. *Vide Abatement*, (E. 7.)

Where a Statute ſays that a Man ſhall be excommunicated *ipſo facto*, there needs no ſentence of Excommunication. 1 *Vent.* 146.

Yet he ſhall not be excommunicated, till the Conviction for the Offence be tranſmitted to the Ordinary. *R.* 1 *Vent.* 146. *Semb. Cro. El.* 919.

But after Excommunication the Eccleſiaſtical Court cannot ſend a Purſuivant or Letters Miſſive to take him: for they ought to make a Certificate, and upon that a *Capias Excommunicatum* iſſues. *R. Cro. El.* 741.

And upon this Writ they ſhall not break a Houſe in the Night to take the Perſon. *Cro. El.* 741.

## (B) The Writ de Excommunicato capiendo.

### (B. 1.) When it lies.

IF a Man be excommunicated and continues in Contempt for 40 Days, upon Certificate by the Ordinary to the *Chancery*, a Writ *de Excommunicato capiendo* iſſues. *Cro. El.* 741.

And by the *St.* 9 *Ed.* 2. 12. Such Writ ſhall not be denied, tho' it be againſt the King's Tenant.

By the Common Law, ſuch Writ was returnable in *Chancery*. 1 *Sal.* 293.

And needed not to mention any Cauſe but for Contempt; for the Cauſe appeared to the *Chancery* by the *Significavit* of the Biſhop. 1 *Sal.* 293.

But ſince the *St.* 5 *El.* 23. the Cauſe of Excommunication ought to be mentioned in the Writ, whereby *B. R.* where it is returnable by that Statute, may judge of it. 1 *Sal.* 293.

By the *St.* 5 *El.* 23. The Writ of *Excommunicato capiendo* ſhall bear *Teſte* in Term, and be returnable in *B. R.* ſome Day in the next Term, and there ſhall be 20 Days between the *Teſte* and Return.

If it was not returned, by the Common Law there was an *Alias*, and *Pluries*, and afterwards an Attachment againſt the Sheriff, returnable in *B. R. F. N. B.* 62. *O.*

And now, by the *St.* 5 *El.* 23. The Writ made and ſealed ſhall be brought into *B. R.* and there delivered of Record to the Sheriff, who, failing to make Return, ſhall be amerced at the Diſcretion of the Juſtices.

If the Party live in *Wales*, any County Palatine, or *Cinque-Port*, the *Significavit* into *Chancery* ſhall be ſent by *Mittimus*, *&c.* and they ſhall direct Proceſs to their Officers there.

And if a Writ of *Excommunicato capiendo* be delivered upon Record in *B. R.* Proceſs goes from that Court till the Party be taken, without reſorting to *Chancery* for a new Original.

Tho' it be not for any of the Cauſes mentioned in the Statute. *R.* 1 *Rol.* 174.

### (B. 2.) What ought to be done previous.

(B. 2.) A Certificate of the Contempt. By whom it ſhall be made.

Before the Writ of *Excommunicato capiendo* be granted, there ought to be a Certificate to the *Chancery* of the Contempt of the Party, by the Ordinary by his Letters under Seal. 1 *Sal.* 293.

And ſuch Certificate ought to be by the Biſhop, or immediate Ordinary.

As, by the Archdeacon of *Richmond*. *Co. L.* 134. *a.*

By the Guardian of the Spiritualities in Time of Vacation: As, by the Dean and Chapter, Archbiſhop, *&c.* if he be Guardian of the Spiritualities. *F. N. B.* 62. *N.* *Co. L.* 134. *a.*

So, if the Biſhop be *in remotis*, *viz.* beyond Sea, or out of his Dioceſe, the Certificate may be by his Chancellor, or Vicar General. *F. N. B.* 62. *N.*

And the Certificate ſhall be good, tho' the Biſhop be not *in remotis*: for that is not traverſable. *F. N. B.* 62. *N.*

So a Biſhop elect may make a Certificate, before he be conſecrated. *Co. L.* 134. *a.*

But none except the Biſhop, or other Ordinary, that is immediate Officer to the King's Courts, regularly can make a Certificate of Excommunication. *Co. L.* 134. *a.*

And

And therefore, upon the Pope's Bull certifying an Excommunication, the Writ of *Excommunicato capiendo* did not go. *F. N. B.* 64. *F.*

Nor, upon a Certificate, that another Biſhop certified him of it. *F. N. B.* 65. *A.*

Nor, upon the Certificate of an Official, Commiſſary, Abbot, *&c.* *F. N. B.* 64. *F.*

(B. 3.) In what Manner.

The Certificate of the Biſhop ought to ſignify, that he has been excommunicated for 40 Days. *F. N. B.* 64. *D.* 12 *Co.* 76.

That he was excommunicated by Special Name, and in a Special Suit againſt him *ex officio*, or by the Party: for otherwiſe he does not incur the greater Excommunication. *F. N. B.* 64. *F.*

That he was Commorant within the Dioceſe of the Biſhop, by whom he is excommunicated. *R. Mo.* 467. *Semb. Lat.* 174.

By what Biſhop he was excommunicated. *R. Mo.* 775.

And for what Cauſe Articles were exhibited. 1 *Rol.* 146. *Semb.* Otherwiſe it will not appear whether it was within the Juriſdiction. 1 *Sal.* 293.

## (B. 4.) How the Writ ſhall be executed.

If the Party be taken upon the *Excommunicato capiendo*, he ſhall be committed to Priſon.

And the Sheriff ſhall return his Writ; but by the *St.* 5 *El.* 23. he need not bring the Body into Court.

If the Sheriff returns, *Non eſt Inventus*, by the *St.* 5 *El.* 23. there ſhall go a *Capias* with Proclamation, on which the Sheriff ſhall make Proclamation 10 Days before the Return, at the County-Court, Aſſiſes, or Quarter Seſſions, that the Party in 6 Days render himſelf, and if he doth not he ſhall forfeit 10*l.*

And after that ſhall go a 2d *Capias* with Proclamation, and thereon 20*l.* Penalty, and ſo a third, and *in infinitum*, each with 20*l.* Penalty; and if the Party be taken, he ſhall be committed without Bail, as on an *Excommunicato capiendo.*

If a Perſon after his Commmitment eſcapes, and the Sheriff has not returned his Writ, a *Capias excommunicatum de novo* ſhall go. *Mod. Ca.* 78.

Otherwiſe, if the Writ be returned. *Mod. Ca.* 78.

Or, if after Commitment upon the former Writ, he be removed by *Habeas Corpus*. *Dub. Mod. Ca.* 78.

But by the *St.* 5 *El.* 23. A Perſon in Priſon out of the Realm, within Age, *Non ſane*, or *Feme Covert*, ſhall not incur the ſaid Penalties.

Nor any, who in the Writ of *Excommunicato capiendo* ſhall not have the Addition required by the *St.* 1 *H.* 5. 5.

Nor, if in the *Significavit* it be not contained, that the Excommunication was for Contempt in ſome original Matter of Hereſy, Refuſal to baptize his Child, to receive the Communion, to come to Church, or in ſome Error of Religion or Doctrine, Incontinency, Uſury, Simony, Perjury in the Eccleſiaſtical Court, or Idolatry.

And therefore, if a *Capias* with Proclamation goes againſt any in Priſon, within Age, *&c.* when taken upon it, he may plead ſuch Matter in Diſcharge of the Penalties given by the *St.* 5 *El.* 23.

So, if he has not a proper Addition. *Sho.* 16. *Jon.* 226.

So, if the *Significavit* to *Chancery* does not ſhew, that the Excommunication was for one of the Cauſes contained in the Statute. *Cro. Car.* 197, 199. 2 *Jon.* 89. *R.* 1 *Rol.* 174. *R.* 12 *Co.* 77.

So, if the Writ of *Excommunicato capiendo* was not delivered upon Record. *Semb.* 1 *Sid.* 165. *R.* 1 *Sid.* 285. 1 *Vent.* 309, 338.

So, if the Party comes upon a *Habeas Corpus*, and it apears that the Writ of *Excommunicato capiendo* does not ſhew good Cauſe for Excommunication; *B. R.* ſince the *St.* 5 *El.* may quaſh the Writ, or award a *Superſedeas*. *R.* 1 *Sal.* 293, 294.

So, if the Cauſe be uncertain: as, in a Cauſe *ſubſtractionis Decimarum, ſive aliorum Jurium Eccleſiaſticorum*; for perhaps the *alia Jura* were not within the Juriſdiction of the Court. *R.* 1 *Sal.* 293.

*In quodam negotio Inſtructionis puerorum ſine Licentia*, without ſaying, in what he inſtructed them. *R.* 1 *Sal.* 294.

Yet the Writ of *Excommunicato capiendo* ſtands in Force, tho' the Penalties are diſcharged for Want of the Addition. *Semb. Sho.* 16. *R.* 2 *Jon.* 89. *Semb. cont.* 1 *Sal.* 294, 5. *R. Jon.* 226.

Or, for that the *Significavit* does not contain any of the Cauſes required by the Statute. *Semb. Cro. Car.* 197. *Adm. Cro. Car.* 199. *R.* 2 *Jon.* 89. *R.* 3 *Mod.* 89. *R. Lat.* 204. *R.* 1 *Sal.* 294.

So an *Excommunicato capiendo* lies now by the Common Law, for Cauſes not mentioned in the *St.* 5 *El.* 23. *Per Windham*, 1 *Sid.* 181.

So, if an *Excommunicato capiendo* be awarded according to the Statute for a Cauſe not mentioned there, the Party ſhall not be diſcharged on Motion, or Suggeſtion, without a *Habeas Corpus* returned, and Plea to it. *R.* 1 *Sid.* 181. *Lat.* 174. *R.* 1 *Sal.* 294.

So he ſhall not be diſcharged for a Miſnomer; for he has no Day to plead, and may have falſe Impriſonment if he be not named in the Writ. *R.* 1 *Mod.* 70.

So, if ſeveral are named in the *Significavit*, and at the End of the Names it be added, *of the Pariſh of A. in the County of B.* this Addition goes to each of them. *R.* 3 *Mod.* 42, 3.

So, if the *Significavit* mentions an Excommunication for not coming to his Pariſh-Church, it is ſufficient; tho' the Statute ſays, generally, *come to Church*; for he might plead it, if he was at another Church. *R.* 3 *Mod.* 42, 3.

So he cannot plead or move to quaſh the Writ before the Return. *R.* 1 *Sal.* 294.

## (B. 5.) How diſcharged.

If the Party excommunicated makes Satisfaction to Holy Church for his Contempt, and the Biſhop, *&c.* certifies it to the *Chancery*, a Writ goes to the Sheriff for his Diſcharge. *F. N. B.* 63. *A.*

And upon that an *Alias*, and *Pluries*; and if the Sheriff does Nothing, an Attachment againſt him returnable in *B. R.* *F. N. B.* 63. *B.*

So, if he gives Caution to the Biſhop to obey, *&c.* and this be certified to the *Chancery*. *F. N. B.* 64. *A.*

So, if the Excommunication was pronounced and certified after a Prohibition ſued, and an Attachment upon it, the Party may ſhew it to the Court, and ſhall have a *Superſedeas* out of *Chancery*. *F. N. B.* 64. *D.*

Or, if the Attachment was returned, he ſhall have it out of *B. R.* *F. N. B.* 64. *D.*

So, upon a Certificate by the Official, that the Excommunicate has appealed. *F. N. B.* 64. *E.* 1 *Ver.* 24.

Or, after Appeal, he may ſue out a *Scire facias* againſt the Biſhop and the Party at whoſe Suit he was excommunicated, and at the Return of the *Scire facias*, if it be not denied, he ſhall have a *Superſedeas*. *F. N. B.* 65. *E.*

And if the Matter cannot be determined at the Day of the Return, it ſhall be adjourned, and in the meſne Time he ſhall have a ſpecial *Superſedeas*. *F. N. B.* 65. *E.*

So, if the Biſhop certifies, that he has commanded the Official to abſolve him, he may thereupon have a Writ for his Diſcharge when abſolved. *F. N. B.* 63. *F.*

And upon that an *Alias*, and *Pluries*, and if the Sheriff does not regard them, an Attachment againſt him. *F. N. B.* 63. *F.*

Upon which Writs the Sheriff ought to inform himſelf, as well as he can, whether he be abſolved; for the Official is not bound to certify him thereof. *F. N. B.* 63. *G.*

So, if the *Excommunicato capiendo* appears to have been granted without good Cauſe, it may be ſuperſeded by *Chancery* at the Common Law; and now, ſince the *St.* 5 *El.* by *B. R.* 1 *Sal.* 293. *Semb. cont.* 1 *Ver.* 24.

But if the Biſhop refuſes to take Caution or Surety to obey the Holy Church, the Excommunicate ſhall have a Writ *de Cautione admittendâ*, by which the Biſhop ſhall be commanded to take Caution, and to command the Sheriff to deliver him. *F. N. B.* 63. *C.*

And if the Biſhop refuſes, he ſhall have a Writ to the Sheriff, *Quod accedat ad Epiſcopum, & moneat ut acceptâ Cautione mandet deliberari, & ſi idem Epiſcopus noluerit, &c.* then the Sheriff ſhall deliver him. *F. N. B.* 63. *D.*

And thereupon he ſhall have an *Alias* and *Pluries*, and if the Sheriff neglects, an Attachment againſt him. *F. N. B.* 63. *E.*

So, if the Excommunication be contrary to the Law of the Realm, ſo that he cannot have a Writ *de Cautione admittendâ*, (for then he would be bound *parere Mandatis Eccleſiæ*,) he ſhall have a Writ to the Biſhop out of *Chancery*, to abſolve him: As, where the Cauſe was out of the Cognizance of the Spiritual Court, and it ſo appears upon the Libel. *R.* 12 *Co.* 76.

So, if the Cauſe, upon which he was excommunicated, be pardoned. *R.* 12 *Co.* 76.

And this; tho' the Party be taken by a Writ of *Excommunicato capiendo*. *R.* 12 *Co.* 76.

Or, in ſuch Caſe, if the Biſhop, upon ſhewing that he was excommunicated for a Matter pardoned, or out of the Cognizance of the Spiritual Court, *&c.* and upon Requeſt, refuſes to abſolve him, an Action upon the Caſe lies againſt the Biſhop. *R.* 12 *Co.* 77.

But if the Excommunication was in a Cauſe, which appears by the Libel to be ſued out of the Dioceſe; there ſhall not be a Writ out of *Chancery* to the Biſhop to abſolve him, but the Writ *de Cautione admittendâ* is ſufficient: for tho' the *St.* 23 *H.* 8. 9. diſallows a Suit out of the Dioceſe, yet there are many Caſes in which it may be ſo. *R.* 12 *Co.* 77.

## (C) Abſolution.

ABSOLUTION ought to be by the ſame Biſhop, who excommunicated, or by him, to whom the Cauſe is removed by Appeal. *R. Mo.* 775.

But, if a Man be twice excommunicated, and abſolved upon the laſt; the firſt ſtands in Force. *R. Mo.* 849.

# EXCUSE.

*Vide Exoine.* — *Pleader*, (E. 15.—F. 18.—3 O. 15, &c.)—
—*Retorn*, (D. 1, &c.)

# EXECUTION.

## (A) Execution in Actions Real.

### (A. 1.) By Entry.

EXECUTION is *Finis & Effectus Legis.*

After Judgment in a Real Action, if the Eſtate continues in the Poſſeſſion of the Tenant againſt whom the Recovery was, the Demandant may enter, when the Writ ſhews the Certainty of the Thing recovered, before Seiſin delivered upon an *Habere facias Seiſinam. Co. L.* 34. *b.*

And he may enter within or after the Year after Judgment. 1 *Rol.* 885. *l.* 10.

So, if a Recovery be of a Rent, Common, *&c.* in Certainty, the Demandant, after Judgment, may diſtrain before Seiſin by an *Habere facias Seiſinam. Co. L.* 34. *b.*

So, if the Tenant dies before Execution, the Demandant may enter upon his Heir. 1 *Rol.* 884. *l.* 47.

So, tho' there are ſeveral Deſcents. 1 *Rol.* 884. *l.* 52. *Vide Poſt,* (A. 5.)

So, if before Execution a Stranger enters and dies ſeiſed, the Demandant may enter within a Year after Judgment. 1 *Rol.* 885. *l.* 2.

So, if Judgment be againſt Tenant in Tail, the Demandant may enter upon the Iſſue in Tail. 1 *Rol.* 884. *l.* 50 *Vide Poſt,* (A. 2.)

So, if a Writ of Error be brought againſt the Heir, and Judgment reverſed, the Demandant in Error may enter upon him, tho' he be in by Deſcent. 1 *Rol.* 884. *l.* 42.

But the Demandant cannot enter upon a Stranger after the Year. 1 *Rol.* 885. *l.* 12.

Or, after a Deſcent caſt. 1 *Rol.* 885. *l.* 15.

### (A. 2.) By *Habere facias Seiſinam.*

An *Habere facias Seiſinam* is a judicial Writ iſſuing out of the Record of the Judgment, and directed to the Sheriff of the County where the Land lies, commanding him *Quod habere faciat* to the Demandant *Seiſinam ſuam de Meſſuagio, &c.*

In a Real Action, after Judgment *quod recuperet Seiſinam,* the Demandant may take out Execution by *Habere facias Seiſinam* at any Time within a Year and a Day after Judgment.

And where the Certainty does not appear by Writ, he cannot enter; but ſhall have an *Habere facias Seiſinam:* as, in Dower. *Co. L.* 34. *b.*

So, tho' the Delivery of Seiſin by the Sheriff does not reduce it to a Certainty: as, if in Dower, a Woman recovers the third Part of a Moiety. *Co. L.* 34. *b.*

If the Tenant dies after Judgment; Execution may be ſued againſt his Heir.

So, againſt the Iſſue in Tail, where the Recovery is upon a Real Title.

So, where a Recovery is againſt Tenant in Tail by Common Recovery; for the Iſſue ſhall have the Recompence in Value. *Co. L.* 361. *b. R. Dy.* 376. *b. R.* 1 *Co.* 94. *b.* 106. *a. Vide Eſtates,* (B. 27.)

But

But if a Recovery be againſt Tenant in Tail upon a falſe Title, who dies before Execution; in a *Scire facias* againſt the Iſſue in Tail, he may avoid it. *Co. L.* 361. *b.*

If the Writ be, that the Sheriff *Habere faciat Seiſinam* of ſeveral Meſſuages in the Poſſeſſion of the ſame Perſon, it is ſufficient that he does Execution in One in the Name of All, without going to each Particular. *R.* 1 *Rol.* 886. *l.* 32. (A. 3.) How it ſhall be done.

If a Recovery be of a Rent, Common, *&c.* it is ſufficient, that the Sheriff, upon the Land, delivers Seiſin of the Rent, Common, *&c.* by *Parol*; for thereby the Demandant is in actual Poſſeſſion. 1 *Rol.* 886. *l.* 52.

So, if the Sheriff offers to deliver Seiſin, and ſhews the Parcels *in which*, it is ſufficient, tho' the Demandant refuſes it; for his Entry afterwards is *congeable*. *Semb. Dy.* 278. *b.*

But where the Houſes, *&c.* recovered are in the Poſſeſſion of ſeveral, it it is not ſufficient to deliver Seiſin of One in the Name of All; but he ought to go to each, particularly. *R.* 1 *Rol.* 886. *l.* 40.

If a Writ be for Seiſin in 20 Acres, he ought to deliver the Acres, as computed by the Country; not 20 meaſured according to the Statute. *R.* 1 *Rol.* 886. *l.* 50.

If the Demandant has once had Execution, he cannot afterwards have Execution again. *Vide Poſt*, (A. 6.)

And therefore, where the Sheriff had returned upon an *Habere facias Seiſinam*, Execution done, an *Alias Habere facias Seiſinam* never was ſeen. *Dy.* 278. *b.*

And if Execution be done, the Court will compel the Sheriff to return the Writ. *R.* 1 *Rol.* 77.

So, if a Fee be executed by the Anceſtor, it never ſhall be executed again by the Heir. 1 *Rol.* 886. *l.* 18.

Or, if a Fee Tail, it ſhall not be executed again by the Iſſue in Tail. 1 *Rol.* 886. *l.* 20.

So, if Huſband and Wife be Tenants for Life, Remainder to them in Tail, the Huſband dies, and the Wife has Execution; the Iſſue ſhall not have Execution again; tho' he claims as Heir to both: for he claims the ſame Eſtate. 1 *Rol.* 886. *l.* 15. *Vide Poſt*, (A. 5.)

## (A. 4.) By *Scire facias.*

If the Demandant ſues Execution after a Year after Judgment, he muſt have a *Scire facias*. 2 *Inſt.* 469. *Vide Poſt*, (I. 4.)—*Pleader*, (3 L. 1, 2.)

## (A. 5.) By *Habere facias Poſſeſſionem.*

If there be Judgment in Ejectment, *&c.* where only a Term for Years is recovered; Execution ſhall be by an *Habere facias Poſſeſſionem.*

It may be ſued after a Year after Judgment in Ejectment, *quoad* the Land, without a *Scire facias*. *R.* 1 *Sid.* 351. *R. cont. Sal.* 258, 600. *Vide Poſt*, (I. 4.)

If the Defendant dies before Execution, it may be done againſt his Heir; for, in Ejectment, the Ejector by Intendment is a Diſſeiſor. *R.* 1 *Rol.* 887. *l.* 10. *Vide Ante*, (A. 1.)

So it may be ſued at any Time before the Term expires. *Semb. Skin.* 427.

If the Plaintiff in Ejectment declares for 40 Acres and recovers only 30, the Sheriff may deliver to him Poſſeſſion of 2 or 3 Acres in the Name of all,

without ſetting them out by Metes and Bounds, tho' the Plaintiff recovered only Part, of what he ſuppoſed in the Poſſeſſion of the Tenant. *R.* 1 *Rol.* 886. *l.* 45. *Vide Ante*, (A. 3.)

The Sheriff upon an *Habere facias Seiſinam*, or *Poſſeſſionem*, may break open a Houſe to deliver Seiſin, or Poſſeſſion of it to the Demandant, or Plaintiff. *R.* 5 *Co.* 91. *b.*

May remove all Perſons in the Houſe. *R.* 1 *Leo.* 145.

And ought ſo to do. 1 *Leo.* 145.

If an *Habere facias Poſſeſſionem* be executed, and before the Return and Filing, the Defendant re-enters, a new *Habere facias Poſſeſſionem* ſhall iſſue. 2 *Brownl.* 253. *Mod. Ca.* 27. *R.* 1 *Sal.* 321. *Semb.* 1 *Leo.* 145. *R.* 1 *Rol.* 353.

If he re-enters after the Writ executed, returned and filed, an Attachment upon an *Affidavit*, ſhall go againſt him. 2 *Brownl.* 253. *Dub.* If the Execution was compleat. *Mod. Ca.* 27. 1 *Sal.* 321.

But till Poſſeſſion compleatly given, and the Bailiffs withdrawn, the Execution is not compleat; and upon Diſturbance, an Attachment goes. *Mod. Ca.* 27. 1 *Sal.* 321. 1 *Leo.* 145.

## (A. 6.) Execution upon a Fine, and Common Recovery.

*Vide Fine*, (E. 15.)—*Pleader*, (3 A. 7.)

A Fine *Sur Conuzance de Droit come ceo*, &c. is executed, and needs not any Execution. 1 *Rol.* 885. *l.* 20. 887. *l.* 15. *Vide Fine*, (E. 9.)

All other Fines are executory, and muſt be executed. *Vide Fine*, (E. 10, &c.)

So a Fine *Come ceo*, &c. to *A.* in Tail, Remainder over, may be afterwards executed, as to the Remainder. 1 *Rol.* 887. *l.* 20. *Dy.* 69.

So, if a Fine be executed as to a Particular Eſtate, it may afterwards be executed as to the Remainder. 1 *Rol.* 885. *l.* 40.

Tho' the Remainder be to him who has the Particular Eſtate. 1 *Rol.* 886. *l.* 5.

Yet, if a Fine be executed, there ſhall not be another Execution: and therefore, if a Fine be to *A.* Remainder to his right Heirs; this is executed for the Whole, and his Son ſhall not have Execution after his Death. 1 *Rol.* 885. *l.* 32. *Vide Ante*, (A. 3.)

If it be to *A.* for Life, Remainder to *B.* in Tail, Remainder to *A.* in Fee, and *A.* ſurrenders to *B.* who dies without Iſſue, and then *A.* enters; his Heir ſhall not have Execution for the Remainder in Fee; for it was executed. 1 *Rol.* 885. *l.* 35.

If a Remainder be limited by Fine to Huſband and Wife, and the Heirs of their Bodies, and one dies, then the particular Eſtate determines, and the Survivor enters; the Iſſue ſhall not have Execution afterwards, tho' he claims as of both Bodies. 1 *Rol.* 885. *l.* 25.

If, to Huſband and Wife, and the Heirs of the Huſband, who ſurvives; his Heir ſhall not have Execution. 1 *Rol.* 885. *l.* 50.

If a Fine be executed by Entry or *Scire facias*, the Execution extends only to the Eſtate in Poſſeſſion; and not to the Remainder.

Tho' the laſt Remainder be to him who has the Poſſeſſion: As, if a Fine be to *A.* in Tail, Remainder over to others for Life, Remainder to *A.* in Fee, and the Remainders for Life ceaſe, whereby *A.* has the Tail and the Fee together; if he ſues Execution, he can ſue it only for the Tail. 1 *Rol.* 886. *l.* 25.

But, if the Fine or Eſtate be avoided before Execution, it ſhall never be executed: As, if Tenant in Tail takes a Fine of *A.* and thereby renders to *B.* for Life, in Tail, or in Fee, and dies before Proclamations paſſed, or Entry

Entry of the Conuſee; whereupon the Iſſue enters; the Conuſee ſhall not have a *Scire facias* againſt the Iſſue to execute the Fine, tho' the Proclamations afterwards paſs. *Pl. Com.* 437. *b.*

## (B) Execution for the King.

### (B. 1.) By *Capias pro Fine*, or *Capias Utlagatum*.

WHEN Judgment is given that the Plaintiff or Defendant *capiatur*, *&c.* a *Capias pro Fine* lies for the Fine due to the King, *Vide Information*, (D. 7.) *Vide Poſt*, (B. 2.)

For *Capias Utlagatum*, *Vide Utlagary*. *Vide Poſt*, (B. 2.)

### (B. 2.) When any in Execution for the King ſhall alſo be ſo for the Party.

If a Man be taken by a *Capias pro Fine* within a Year, and a *Capias* lies in the ſame Action for the Plaintiff, the Party taken upon the *Capias pro Fine* ſhall be alſo in Execution for the Plaintiff, if he pleaſes, without his Prayer. 5 *Co.* 88. *b.* 1 *Rol.* 895. *l.* 50. *Bridg.* 7. 14 *H.* 7. 15.

So, if a *Capias* does not lie for the Plaintiff in the ſame Action, but only a *Fieri facias*, *&c.* yet upon his Prayer, the Party taken upon the *Capias pro Fine* ſhall remain in Execution for the Plaintiff. 5 *Co.* 88. *b.* *Bridg.* 7.

So, if he be not taken upon a *Capias pro Fine*, till after the Year, when the Plaintiff is put to a *Scire facias*. 5 *Co.* 88. *b.*

And in ſuch Caſe he ſhall be in Execution for the Plaintiff, before that he be for the King. 2 *Rol.* 158. *l.* 7.

And tho' the Fine, and Proceſs thereon be pardoned. 1 *Leo.* 51. *Bridg.* 7.

But where the Party is not taken upon a *Capias pro Fine* within the Year, or a *Capias* does not lie in the ſame Action for the Plaintiff; the Party ſhall not be in Execution for him, without Prayer. 5 *Co.* 88. *b.*

Or, if one only be taken, where the Judgment was joint againſt many. 1 *Rol.* 896. *l.* 2.

So, if taken upon a *Capias pro Fine*, where the Plaintiff takes Execution by *Elegit*. 1 *Leo.* 51.

So, if the Defendant be taken upon a *Capias Utlagatum*, after Judgment, within the Year; he ſhall be in Execution for the Plaintiff, if he will, without Prayer. *R.* 5 *Co.* 88. *a.* *Mo.* 566. *Yel.* 20. 1 *Rol.* 895. *l.* 20. *Bridg.* 7.

Tho' his Body never was brought into Court, or committed in Execution for the Plaintiff. *R.* 5 *Co.* 88. *b.*

Tho' by the Common Law no *Capias* lies for the Plaintiff, if no Laches be in him in the Continuance of his Proceſs: for as the King has Benefit by his Suit, he ſhall have Advantage by the King's Suit. *R.* 5 *Co.* 88. *a.*

So, if he be taken upon a *Capias Utlagatum* after the Year, if the Plaintiff prays that he may be in Execution for him; it ſhall be ſo. *Adm.* 5 *Co.* 89. *b.*

So, if taken upon a *Capias Utlagatum* out of *B. R.* where Judgment was affirmed upon Error. *Cro. El.* 706.

But a Party taken upon a *Capias Utlagatum* ſhall not be in Execution for the Plaintiff, unleſs he ſo pleaſes. *Per* 2 *J. Gawdy cont. Cro. El.* 850. *R.* 1 *Rol.* 895. *l.* 30.

Or,

Or, if taken, after the Year, he ſhall not be ſo, without the Prayer of the Plaintiff. *Adm.* 5 *Co.* 89. *b. Semb. cont. Cro. El.* 706. *Dub.* 1 *Rol.* 895. *l.* 25.

## (B. 3.) Execution for a Debt to the King.

(B. 3.) To what Thing it extends. *Vide Dett*, (G. 9.)

How a Man becomes indebted to the King, *Vide Dett*, (G. 1.)

By the *St.* 33 *H.* 8. 39. All Obligations and Specialties for any Cauſe concerning the King, ſhall be taken *Domino Regi*; and ſhall be of the ſame Force and Effect as a Statute-Staple.

And all Proceſs, Judgments, Executions on the ſame ſhall be of the ſame Effect againſt all bound, their Heirs, Succeſſors, Executors, and Adminiſtrators, and no other, as on a Statute-Staple.

By the Common Law, before that Statute, the King had Power to take Execution againſt the Body, the Land, and the Goods of his Debtor, or Accountant to him. 3 *Co.* 12. *b. Vide Dett*, (G. 2, &c.)

In the Hands of the Heir, or of a Stranger. *Vide Dett*, (G. 5, 6.)

And the King ſhall be preferred before a Subject, for his Debt. *Vide Dett*, (G. 8.)

But by the *St. M. Ch.* 8. *Nos non ſeiſiemus Terram aliquam, aut Redditum, pro Debito noſtro quamdiu Catalla Debitoris ſufficiunt, aut ipſe paratus ſit ſatisfacere.*

And therefore, if the Goods of the King's Debtor appear ſufficient, the Sheriff ought not to extend his Lands in the Hand of him, his Heir, Purchaſer, or Terretenant. 2 *Inſt.* 19.

And if the Executor, or Heir, has Aſſets, by the Courſe of the *Exchequer*, Proceſs does not go againſt the Purchaſer. *Dy.* 67. *b. in Marg.*

(B. 4.) By what Proceſs done. By *Extendi facias*. *Vide Poſt*, (C. 14.) *Vide Statute-Staple*, (D. 5.)

Since the *St.* 33 *H.* 8. 39. the uſual Proceſs for the King's Debt is an *Extendi facias*; whereby the Sheriff is commanded *Quod per Sacramentum, &c. inquirat quæ & cujuſmodi Bona & cujus Pretii habuit, &c. & ſi Bona, &c. non ſufficerent, &c. tunc per ſacramentum inquirat quæ Terras & Tenementa & cujus Valoris, &c. & ea extendi faciat, &c. & capiat prædictum Debitorem, &c.* 2 *Inſt.* 19.

*By the ſame Statute* Suits in the ſeveral Courts for the King's Debts ſhall be under the Seal of the ſeveral Courts, by *Capias*, *Extendi facias*, *Subpœna*, Attachment, and Proclamation, if need be, or otherwiſe as to the ſaid Courts ſhall be thought expedient for the Recovery of the King's Debts.

(B. 5.) What Lands, &c. ſhall be extended. *Vide Poſt*, (C. 14.)

After Inquiſition taken, all Lands and Tenements found in the Seiſin of the Debtor are to be extended by the Sheriff.

So a Term for Years alſo may be extended. Q. If it ought not to be ſold? *Lane* 59.

If Goods are ſeiſed upon an Execution for the King's Debt, they ought to be appraized before Sale. *Mad.* 670.

If the King has Judgment in a *Scire facias* upon a Recognizance for Surety of the Peace, he may have Execution againſt the Body, as well as the Land of the Party. 1 *Rol.* 897. *l.* 20.

If a Man pleads a Title by Extent, he ought to ſhew, when it iſſued, out of what Court, and whether it was upon Inquiſition. 2 *Rol.* 11.

## (C) Execution for a Common Perſon; In Perſonal Actions.

### (C. 1.) What, by the Common Law.

BY the Common Law, Execution upon a Judgment or Recognizance for a Common Perſon was generally by *Levari facias*, commanding the Sheriff, *quod levari faciat de Terris & Cattallis, &c.* the Debt. 3 *Co.* 12. *a.* 2 *Inſt.* 394.

Or, by *Fieri facias*, commanding the Sheriff, *quod fieri faciat de Bonis & Catallis, &c.* 3 *Co.* 12. *a.*

So, in Actions *Vi & Armis*, Execution might be made by a *Capias ad Satisfaciendum.* 3 *Co.* 12. *a.* *Vide Poſt*, (C. 9.)

So in an Action againſt an Heir, upon an Obligation or other Lien of his Anceſtor, Execution would be againſt the Lands and Tenements which the Heir had by Deſcent. 3 *Co.* 12. *b.* *Vide Aſſets.*

### (C. 2.) What not.

But, by the Common Law, Execution never was againſt the Lands or Tenements of the Party at the Suit of a Common Perſon, except in the Caſe of an Heir. *R.* 3 *Co.* 11. *b.* *&c.* 1 *Inſt.* 394.

Nor againſt the Body of the Defendant, except where he was charged with Force by an Action *Vi & Armis.* *R.* 3 *Co.* 11. *b.* 12. *a.*

### What by Statute. *

* By the *St. W.* 2. 18. It may be by *Elegit* to the Sheriff to extend and deliver to the Plaintiff all the Goods of the Party, (Beaſts of the Plough excepted) and one Moiety of his Lands *Vide Poſt*, (C. 14.)

Or, by the *St.* 11 *E.* 1. On a Statute Merchant Execution may be againſt the Body, if the Goods, *&c.* are not ſufficient.

And, by the *St. W.* 2. 11. Againſt the Body in Account.

And by the *St.* 25 *Edw.* 3. *ſt.* 5. *ch.* 17. In Debt.

### (C. 3.) Execution againſt Goods and Chattels.

(C. 3.) By *Levari facias.*

By the *Levari facias* the Sheriff may levy the Debt of all the Goods and Chattels of the Defendant.

So he may take the *Emblements*, and all preſent Profits of his Land. 3 *Co.* 11. *b.* *Vide Proceſs*, (E. 4.)

So, the Rents. *Pl. Com.* 441. *a.*

So Goods attached, (where by Cuſtom Goods at the Commencement of the Suit may be attached to anſwer to the Plaintiff if he recovers,) may be taken in Execution, ſubject to the Attachment. *R.* 1 *Rol.* 893. *l.* 40.

But upon a *Levari facias* the Sheriff cannot take the Defendant's Lands to deliver in Execution; tho' the Writ ſays, *de Terris & Catallis.* *Pl. Com.* 441. *a.*

(C. 4.) By *Fieri facias.*

What Things may be taken. *Vide Proceſs*, (E. 5, 7.)

So by a *Fieri facias* the Sheriff may take all Goods and Chattels of the Defendant, which he may take upon the *Levari facias*: for the *Fieri facias* includes the *Levari facias.* 2 *Inſt.* 394.

So he may take and ſell an Annuity of 40*l. per Annum* granted by the King, for Years, to be paid by the Receiver of the Court; for it is in the Nature of a Rent-Charge. *R.* 2 *Cro.* 79.

So he may extend, or ſell a Term for Years. 8 *Co.* 171. *a.*

So he may cut down, and ſell Corn growing on the Land: for the Leſſee has an Intereſt in it. 1 *Sal.* 368.

So, Utenſils for Trade erected by the Defendant, tho' fixed to the Land; as, Coppers, Fats, Pavements, *&c.* *R.* 1 *Sal.* 368. *Vide infra.*

And after Sale the Defendant ſhall not have his Term again, tho' the Plaintiff be ſatisfied his Debt by the Profits. *R. Mo.* 873.

So, if Goods are taken in Execution at the Suit of *B.* and the Sheriff returns *nulla Bona*; they ſhall be afterwards taken at the Suit of *C.* for the Property is not veſted in *B.* nor in the Sheriff. 2 *Ver.* 238.

But the Sheriff upon a *Fieri facias* cannot take Things fixed to the Freehold, as Doors, Windows, *&c.* *Vide Biens*, (B.)

Nor Furnaces, Coppers, *&c.* fixed. *Dub.* 1 *Rol.* 891. *l.* 50. *R. cont.* 1 *Sal.* 368. if erected by the Defendant for the Uſe of his Trade. *Vide ſupra.*

Nor Hearths, Chimney-pieces, *&c.* put up by the Defendant for the Uſe of the Houſe and not for his Trade. *R.* 1 *Sal.* 368.

So the Sheriff cannot take Goods in Pledge.

Or, demiſed to another. *Dy.* 67. *b. in Marg.*

Nor Goods taken, and in Cuſtody of the Sheriff, upon a former Execution. *R. Sho.* 173. *R.* 3 *Mod.* 236.

So he cannot take the Goods of a Stranger: for he is to take the Goods of the Party only, at his Peril.

And if there are joint Partners, and Execution againſt One; the Sheriff can take only his Share. *R. Sho.* 174. Can ſell only his Part, tho' he ought to ſeiſe the Whole. *R.* 1 *Sal.* 392.

So, if Execution be upon a Judgment againſt a Corporation, he cannot take the Goods of a Member of the Corporation, which he has in his natural Capacity; but the Goods of the Corporation only. 1 *Rol.* 920. *l.* 50.

(C. 5.) **How the Sheriff ſhall proceed upon it.**

After a *Fieri facias* delivered to him, the Sheriff may enter the Houſe of the Defendant, when the Door is open, and ſeiſe the Goods of the Defendant there found. *R.* 5 *Co.* 92. *a.*

Or, the Houſe of a Stranger. *Semb.* 5 *Co.* 92. 2 *Cro.* 486. *Cro. El.* 759, 909. *Vide Poſt*, (C. 12.)

And this, by Night or by Day, if the Door be open. *Semb.* 5 *Co.* 92. 2 *Cro.* 486.

But if it be the Houſe of a Stranger, he ought to aver that the Goods were there. *Semb. Lut.* 1434.

If the Houſe be open, and the Sheriff enters, he may afterwards break an inner Door to take the Goods. *R. Pal.* 54.

* [*Note*, This was the Houſe of the Defendant himſelf.]

And he need not aver that the Goods were there. *Pal.* 54. *

So, if the Goods of *A.* are conveyed into the Houſe of *B.* to avoid an Execution, the Sheriff upon a *Fieri facias* againſt *A.* may break the Houſe to make Execution. *R.* 5 *Co.* 93. *a.*

So, if the Sheriff, *&c.* enters, and takes Goods in Execution, and the Party locks up and impriſons the Bailiffs, *&c.* in the Houſe; the Sheriff may break the Houſe to deliver the Bailiffs. *R.* 2 *Cro.* 556. *Pal.* 53. 2 *Rol.* 137.

So the Sheriff may make Sale of Goods in Execution, without any Appraiſement of them.

So he may, tho' a *Superſedeas* be delivered to him after the Goods were ſeiſed into his Hands. *Per* 2 *J. Mo.* 542.

If, upon Sale by the Sheriff, Money remains in his Hands beyond the Debt, the Sheriff may keep it till the Defendant demands it, and need not deliver it to the Defendant before Requeſt. *R. Noy* 59.

But the Sheriff cannot break a Houſe to make Execution upon Goods, or Body. *R.* 5 *Co.* 92. *Cro. El.* 909. *Mo.* 668. *Yel.* 28.

Neither can he open the Door, tho' it be only latched.

Or knock, and when the Door is a little opened, thruſt in with Violence. *R. Hob.* 62.

Nor uſe a *Capias Utlagatum* to execute a *Latitat*. *R. Hob.* 263.

Nor take ſeveral different Chattels, when one is ſufficient for the Debt. *R. Noy* 59.

So the Sheriff ought not to deliver Goods taken in Execution to the Plaintiff himſelf; but ought by Sale to levy the Debt. *R. Cro. El.* 504.

So he ought not to redeliver them to the Defendant, if he pays only Part of the Debt. *Semb.* 2 *Vent.* 94.

So he cannot detain them till the Money to be levied, and alſo the Charge of keeping them, be paid; for tho' the Sheriff may make immediate Sale, and the keeping is in Favour of the Defendant, for which he ought to make Amends, yet this ſhould be by Agreement, and not by Detainer till Satisfaction. *Semb. Lut.* 1446.

Yet after the Money levied, the Sheriff may pay it to the Plaintiff. *Dub.* 3 *Lev.* 204.

(C. 6.) **How he ſhall ſell.**

When the Sheriff has taken Goods in Execution, he may ſell them, without other Direction. *Mod. Ca.* 295.

Tho' his Office be determined before the Sale. *Mod. Ca.* 299. *R.* 1 *Rol.* 893. *l.* 50.

So he may ſell a Term for Years. 4 *Co.* 74.

And it is ſufficient to recite, that the Party was poſſeſſed *de Termino diverſorum Annorum*, without ſhewing the Commencement, or End of the Term. *R.* 4 *Co.* 74. *a.*

And if he miſtakes the Date of the Term, if the Bill of Sale has general Words, *viz. All the Defendant's Intereſt, &c.* it is ſufficient. *R.* 4 *Co.* 74. *a.*

And a Sale by the Sheriff continues good, tho' the Judgment be afterwards reverſed. *R.* 5 *Co.* 90. *b.* *R.* 2 *Cro.* 246. for the Money only ſhall be reſtored. *R. Dy.* 363. *a.* If the Sale was to a Stranger. *Yel.* 180. Otherwiſe, if the Sale be upon an *Elegit*. *Vide Poſt*, (C. 14.)

But a Sale of a Term by the Sheriff, who miſtakes the Date, *&c.* ſhall be void. *R.* 4 *Co.* 74.

(C. 7.) **How he ſhall make the Return.**

The Sheriff need not return a Writ of *Fieri facias*. *Vide Retorn*, (F. 1, &c.)

But if the Sheriff returns, *Goods ſeiſed to the Value of the Debt*, he ſhall anſwer for ſuch Value to the Plaintiff. *Mod. Ca.* 299. 1 *Sal.* 323. *R.* 1 *Sid.* 407.

Or Debt lies againſt him for the Money. *Vide Dett*, (A. 9.)

Tho' they be afterwards reſcued from him; for he cannot return the *Reſcous*. *Mod. Ca.* 296, 299. *R.* 2 *Rol.* 57.

(C. 8.) ***Venditioni exponas.***

If the Sheriff returns, *remanent pro Defectu Emptorum*, the Plaintiff ſhall have a *Venditioni exponas*. 1 *Sal.* 323. 1 *Sid.* 407.

If the former Sheriff made ſuch Return, the new Sheriff ought to make Sale upon the *Venditioni exponas*. 1 *Rol.* 894. *l.* 5. 4 *Leo.* 20.

Tho' the Writ be to the new Sheriff that he cauſe the former Sheriff to ſell. *R.* 1 *Rol.* 894. *l.* 5. but *Semb.* that upon a *Diſtringas nuper Vicecomitem quod Venditioni exponat*, the old Sheriff may ſell. *Mod. Ca.* 295, 299. 1 *Sal.* 323.

There

There are two Forms of the *Diſtringas ſuper Vicecomitem*; the one, that the old Sheriff *ſhall ſell, and bring the Money into Court*. *Mod. Ca.* 295.

The other, that *he ſell, and deliver the Money to the new Sheriff*. *Mod. Ca.* 295, 299. 1 *Sal.* 323. 2 *Rol.* 57.

And both are compulſive (and do not give Authority) to ſell. *Mod. Ca.* 295.

For he cannot return upon a *Diſtringas ſuper Vicecomitem*, *Quod remanent pro Defectu Emptorum*. *Mod. Ca.* 296.

But if a *Superſedeas* comes to the Sheriff, he cannot afterwards ſell without a *Venditioni exponas*; for the Sale ſhall be void. *R.* 1 *Rol.* 894. *l.* 10.

Yet a *Venditioni exponas* ſhall go for the Sale of Goods levied before the *Superſedeas*. *Dy.* 99. *a.* *Yel.* 6. *R. Cro. El.* 597.

And he may ſell before a *Superſedeas*, tho' he be out of his Office, without a *Venditioni exponas*. *Per Holt*, *Mod. Ca.* 295.

If a Sheriff levies Money, but does not return his Writ at all; the Sale after a *Venditioni exponas* to the new Sheriff ſhall be good. *R.* 1 *Rol.* 893. *l.* 50.

If the Sheriff levies Money of the Defendant to the Value of the Debt, the Defendant ſhall be diſcharged againſt the Plaintiff, tho' the Money never comes to his Hand. *Mod. Ca.* 297, 299. *R.* 2 *Rol.* 57.

And he may plead ſuch Matter for his Diſcharge, in Debt afterwards upon the Judgment. 2 *Lev.* 203.

## (C. 9.) By *Capias ad Satisfaciendum*.

(C. 9) When it lies.

So Execution may be by *Capias ad Satisfaciendum* againſt the Body of the Defendant, in all Caſes where a *Capias ad reſpondendum* lies in Proceſs. 3 *Co.* 12. *a.*

And therefore, in all Actions *Vi & Armis*, as in Treſpaſs, &c. for there a *Capias* lies in Proceſs at the Common Law. 3 *Co.* 12. *a.* *Vide Ante*, (C. 2.)

If the Principal offers himſelf in Diſcharge of the Bail, and the Plaintiff doth not accept him, yet he may afterwards have a *Capias ad Satisfaciendum* againſt him; for the Refuſal was not a Diſcharge, but a Forbearance. 1 *Rol.* 898. *l.* 45.

So, at Common Law, the King may have Execution by *Capias*. *Vide Ante*, (B. 3, &c.)

So, by the Courſe of the Court, a *Capias* lies upon a Judgment againſt Bail in a *Scire facias* upon a Recognizance in *B. R.* *Vide Bail*, (R. 11.)

But a *Capias* does not lie againſt Bail by Recognizance in *C. B.* or in an Inferior Court. *Vide Bail*, (R. 11.)

Or againſt Bail in *B. R.* on a Writ of Error in the *Exchequer*. *Vide Bail*, (R. 11.)

So a *Capias ad Satisfaciendum* does not lie upon a Recognizance in *Chancery*; for no *Capias* is given on a *Scire facias*, by any Statute; and it does not lie by the Common Law. *R.* 1 *Rol.* 897. *l.* 30. *R. Dy.* 306. *a.* *Dub.* 2 *Bul.* 63.

So a *Capias* does not lie upon Judgment againſt a Garniſhee in *Detinue*: for he is no Party to the Suit. 1 *Rol.* 896. *l.* 50.

So, if a Woman recovers Damages in Dower, ſhe ſhall not have Execution by *Capias ad Satisfaciendum*; for no *Capias* lies in Proceſs. 1 *Rol.* 898. *l.* 2.

So in all Caſes, where a *Capias* does not lie in Proceſs, no Execution ſhall be by *Capias ad Satisfaciendum*: As, in an Aſſiſe of Nuſance. *Sho.* 74.

So a *Capias* did not lie againſt a Prior, &c. in Treſpaſs, or other Action. 1 *Rol.* 898. *l.* 20.

So, if the Plaintiff ſues a *Scire facias* within the Year, (tho' he need not,) he cannot afterwards have a *Capias* before Judgment in the *Scire facias*. *R.* 1 *Rol.* 900. *l.* 25.

(C. 10.) When the Defendant ſhall be in Execution.

If Defendant renders himſelf, and afterwards brings Error, and has a *Superſedeas*, but does not thereupon find Bail, the Court, upon the Prayer of the Plaintiff, may commit him in Execution, tho' the Record be removed. 1 *Rol.* 896. *l.* 10.

So, if a Man be arreſted upon a *Capias ad Satisfaciendum*, he ſhall be in Execution before the Return of the Writ. 1 *Rol.* 901. *l.* 30.

If the Defendant be in Cuſtody of the Sheriff, and another Writ of *Capias ad Satisfaciendum* is delivered to the Sheriff, againſt him, he ſhall be in Execution immediately upon the Second Writ, without actual Arreſt. *R.* 5 *Co.* 89.

So, if the Defendant be in Priſon for a Crime, by Leave of the Court he may be charged in Execution. *Ray.* 58. 1 *Sid.* 154.

And tho' he be charged without Leave, which he ought not to be, yet he ſhall not be diſcharged. *R. Ray.* 58. 1 *Sid.* 90.

If the Defendant be in Priſon before Judgment, in the Priſon of the ſame Court where the Judgment is; the Plaintiff may pray, that he may be in Execution, and a *Committitur* ſhall be entred on the Roll, and then he ſhall be in Execution. 1 *Rol.* 895. *l.* 5.

Or, if he be in another Priſon, he ſhall be brought up by *Habeas Corpus*, and committed in Execution. 1 *Rol.* 895. *l.* 40.

So, if there be Judgment in a *Scire facias* againſt him, and 3 or 4 Years afterwards he is in Priſon for another Cauſe, he may be brought into Court by *Habeas Corpus*, and charged in Execution. 1 *Rol.* 896. *l.* 5.

If a Defendant be taken upon a *Capias pro Fine*, or a *Capias Utlagatum*, he ſhall be in Execution for the Party, if he will. *Vide Ante*, (B. 2.)

(C. 11.) When not.

But, without Prayer, or a *Habeas Corpus* and a *Committitur* upon the Roll, he ſhall not be in Execution, tho' the Judgment was in *B. R.* and the Defendant at the ſame Time was Priſoner in the *Marſhalſea* of the Marſhal for another Cauſe. *R.* 1 *Rol.* 895. *l.* 5.

Or, if the Judgment was in *C. B.* and he at the Time was Priſoner in the Fleet.

Tho' he was Priſoner at the Suit of the Plaintiff, in the ſame Action, for Want of Bail. *R.* 1 *Rol.* 894. *l.* 52.

Tho' the Warden of the Fleet informs the Chancellor, or *C. B.* that he is a Priſoner there, and the Court commands him to detain him till Judgment ſatisfied. *R.* 1 *Rol.* 895. *l.* 15, 40. *Dy.* 306. *a.*

Tho' a *Habeas Corpus* be granted for him, and the Warden returns, that he is *Languidus*. 1 *Rol.* 894. *l.* 45.

Tho' a ſpecial Writ de directed to the Warden, to detain him: for he ought to appear in Court upon the *Habeas Corpus*, and ſhall be oppoſed, whether he be the ſame Perſon. *R.* 1 *Rol.* 894. *l.* 40.

So, if a Defendant be committed in Execution upon a Writ to the Sheriff of *Middleſex*, he ſhall not afterwards be charged in Execution upon another Writ to the Sheriffs of *London*: for they are different Counties, and diſtinct Priſons, tho' the ſame Perſons are Sheriffs of both, and *Newgate* is the Priſon for both. *R.* 1 *Rol.* 894. *l.* 25.

So, if a Defendant taken upon a *Capias ad Satisfaciendum* be brought into Court by the Sheriff, he ſhall not be committed in Execution, if the Plaintiff does not pray it. *R.* 1 *And.* 118.

And he ſhall be diſcharged out of the Cuſtody of the Sheriff alſo, if the Sheriff does not pray the contrary. 1 *And.* 118.

(C. 12) An Arreſt, What ſhall be.

If a Bailiff, &c. puts his Hand, &c. upon the Party, ſaying that he arreſts him; it ſhall be a ſufficient Arreſt, without ſhewing him the Warrant, and without ſaying, at whoſe Suit he was arreſted, if he does not aſk it. *R.* 2 *Cro.* 485. *Semb. cont.* 6 *Co.* 54. 9 *Co.* 69. *a.*

So, tho' the Bailiff has the Warrant in his Pocket. *R.* 2 *Cro.* 486.

Or has 2 Warrants in his Pocket, and does not ſay upon which he arreſts him; for he ſhall be arreſted upon both. *R.* 2 *Cro.* 486.

So, if a Bailiff gives a Warrant to his Servant, who by his Command and in his Preſence, puts his Hand upon him, and ſays, *I arreſt you.* *Dub. per Holt, Mod. Ca.* 211.

So, if the Servant goes into another Room out of the Preſence of the Bailiff, who waits at the Door, and there arreſts him. *Dub. per Holt, Mod. Ca.* 211.

So, if the Bailiff only touches him, and ſays, that he arreſts him. 1 *Sal.* 79.

So, if *B.* be arreſted, and in Cuſtody of the Sheriff, upon a *meſne* Proceſs, and afterwards a *Capias Utlagatum* be delivered to the Sheriff againſt *B.* without an actual Arreſt, he ſhall be in Cuſtody upon the *Capias Utlagatum*; and if he eſcapes, the Declaration ſhall ſay, that he was arreſted upon it. *R.* 5 *Co.* 89. *a.*

But if the Party requires it, he ought to ſhew the Warrant, tell at whoſe Suit, for what Cauſe, by what Proceſs, and in what Court returnable the Arreſt is made; otherwiſe it will be wrongful. *R.* 6 *Co.* 54. 9 *Co.* 69. *a.*

So Words only do not make an Arreſt: and therefore, if a Bailiff ſays, *I arreſt*, and does not touch him, tho' he be beat off by a Sword or other Weapon, it is no Arreſt. *R.* 1 *Sal.* 79.

The Sheriff may enter the Houſe of another where the Party is, if the Door be open, to make an Arreſt. *R.* 2 *Cro.* 486. *R.* 5 *Co.* 92. *a.* *Vide Ante*, (C. 5.)

Tho' it be at 6 o'Clock at Night. *R.* 2 *Cro.* 486.

So, upon an Attachment againſt him, he may break the Houſe to take him. *R.* 1 *Rol.* 336.

So, if a Man arreſted eſcapes into an Houſe, he may break the Houſe to retake him. *R. Pal.* 53.

So, if a Window be open, and the Bailiff arreſts him at the Window, and then the Party eſcapes; the Bailiff may break the Houſe to take him. *R. Pal.* 53. 2 *Rol.* 138.

But upon Information that his Priſoner fled into the Houſe of *B.* he cannot enter, and, upon Denial of the Keys of a Cheſt, break it open, if he be not in the Cheſt: for he takes it upon him at his Peril. *R.* 2 *Rol.* 564. *l.* 15.

(C. 13.) When the Defendant ſhall be diſcharged.

If a Man taken upon a *Capias ad Satisfaciendum* ſatisfies the Debt, the Sheriff may diſcharge him. *Dub. Cro. El.* 404. If the Payment be to the Sheriff. *Dub.* 2 *Lev.* 203.

So, if a *Superſedeas* of the Proceſs comes to the Sheriff.

So, if a *Capias ad Satisfaciendum* comes to the Sheriff, and before an Arreſt upon it, the Defendant pays the Debt to the Sheriff; he ought not to be afterwards arreſted. *Semb. Cro. El.* 404.

But a Man in Execution ſhall not be diſcharged upon *Affidavit*, tho' there be Cauſe: but ought to have a *Superſedeas*, or other Matter of Record. *Pr. Reg. Tit. Execution.*

So,

So, if a *Superſedeas* be delivered to an Officer, he may detain the Party, till he takes a reaſonable Time to be informed of the Import of it. *Dub. Cro. El.* 404.

So, if he pays the Debt to the Marſhal, being committed to him, he ſhall not be diſcharged. *Per 2 J. Wild cont. 2 Mod.* 214. *R. 2 Lev.* 203.

So, if the Plaintiff dies, and the Defendant has Right of Adminiſtration to him, he ſhall not be diſcharged till Satisfaction acknowledged, which he cannot do himſelf, but another muſt take out Adminiſtration, and acknowledge Satisfaction upon the Judgment. *R. 2 Mod.* 315.

## (C. 14.) By *Elegit*.

So now, by the *St. W.* 2. 18. Upon Judgment or Recognizance *ſit in Electione* of the Plaintiff *quod Vicecomes fieri faciat de Terris & Catallis, vel quod liberet omnia Catalla (exceptis bobus & aſris Carucæ) & Medietatem Terræ quouſque Debitum fuerit levatum per rationabile Pretium & Extentum. Co. L.* 289. *b.* 2 *Inſt.* 394. *Vide Proceſs,* (E. 6.)

If the Plaintiff prays an *Elegit*, the Entry ſhall be, *quod elegit ſibi Executionem de omnibus Catallis, & Medietate Terræ.* 2 *Inſt.* 395.

Execution by *Elegit* may be by an Executor or Adminiſtrator, as well as by the Plaintiff himſelf. 2 *Inſt.* 395.

By the Succeſſor of the Conuſee, where a Recognizance is made to a Corporation; as, to the Chamberlain of *London.* 2 *Inſt.* 395. *R.* 4 *Co.* 65.

So it may be upon a Precept to a Serjeant at Mace in *London*, or other Officer of any Court of Record, who does Execution, as well as upon Proceſs to the Sheriff. 2 *Inſt.* 395. *R.* 4 *Co.* 65.

So, upon a Mandate by the Sheriff to the Bailiff of a Franchiſe, which has Execution and Return of Writs. *R. Cro. Car.* 319.

So it lies againſt an Executor or Adminiſtrator upon a *Devaſtavit. R.* 2 *Leo.* 188.

If an *Elegit* upon a Judgment, and another upon a Statute, be delivered to the Sheriff at the ſame Time, Execution ſhall be firſt made upon the Judgment; for that is upon a Record. *Br. Jud.* 79.

But an *Elegit* againſt an Heir does not lie during his Minority; tho' he be charged as Terre-tenant. *Co. L.* 290. *a.*

Nor, againſt the Wife of the Defendant, endowed by the Heir within Age. *Co. L.* 290. *a.*

If an *Elegit* be prayed, the Sheriff ſhall take an Inquiſition; for there ſhall be a reaſonable Appraiſement of the Goods, and Extent of the Lands; which ſhall be made by an Inqueſt of 12 Men. 2 *Inſt.* 396. *Dy.* 100. *Cro. El.* 584.

And the Inquiſition ought to find the Lands with Certainty; for to find no certain Eſtate will be inſufficient. *Clift* 877. *Vide Statute Staple,* (D. 5.)

It ought to ſhew the Place and County, where the Inquiſition is taken, and where the Lands lie. *Semb. Dy.* 208. *b.*

After the Inquiſition found, the Sheriff ſhall deliver the Moiety; but the Jury need not divide it. *R. Cro. Car.* 319.

So the Sheriff ought to deliver the Lands deſcribed with Certainty; for, to ſay that he delivered a Moiety, is not ſufficient. 1 *Vent.* 259.

Deſcribed by Metes and Bounds. *Hut.* 16. Diſtinctly. 1 *Brownl.* 38. But it need not be by Metes. *Dal.* 26.

He ought to deliver a Moiety only; for if he delivers more, it will be void for the Whole. 1 *Sid.* 91, 239.

If the Defendant be Joint-tenant, or Tenant in Common, it ought to be ſpecially mentioned in the Return. *Hut.* 16. 1 *Brownl.* 38.

The

The Sheriff ſhall make Execution of all the Goods.

And if it appears that the Goods are ſufficient for the Debt, the Sheriff ought not to extend the Land. 2 *Inſt.* 395.

If the Goods are not ſufficient, he ought to extend a Moiety of all the Lands, which the Defendant or Conuſor had at the Time of the Judgment, *&c.* 2 *Inſt.* 395.

If there are divers Conuſors, a Moiety of the Lands of all. 2 *Inſt.* 396.

If the Defendant has aliened after Judgment, a Moiety of the Land in the Hand of the Purchaſer, as well as of the Defendant. 2 *Inſt.* 396.

If the Lands lie in ſeveral Vills, a Moiety of the Land in all; and not the whole in one Vill. *R.* 1 *Lev.* 160. *Cont. Bro. Elegit* 14.

And he may extend a Term for Years, tho' it be a Chattel. 2 *Inſt.* 396.

And Lands, which the Conuſor or Defendant has by Extent upon a Statute-Merchant, *&c.* 1 *Rol.* 887. *l.* 52. *R.* 4 *Co.* 65. *b.* *Vide infra.*

So, Lands which are *Antient Demeſne.* 2 *Inſt.* 397. *R.* 1 *Rol.* 888. *l.* 5.

So, a Reverſion of Land upon a Leaſe for Years; and the Conuſee ſhall have a Moiety of the Rent. 1 *Rol.* 894. *l.* 12. 3 *Leo.* 113. *Mo.* 36.

So, all Tenements, as well as Land, of the Defendant; as, a Rent, *&c.* *Bro. Elegit* 13. *Mo.* 32.

So two Thirds of a Rent may be extended, tho' the Defendant has the Whole. *R. Cro. El.* 742.

So he may extend upon an *Elegit* Lands before in Execution upon a Statute. *R.* 4 *Co.* 65. *b.* *Vide ſupra.*

So now, by the *St.* 29 *Car.* 2. 3. Lands, Tenements, *&c.* of which any ſhall be ſeiſed or poſſeſſed in Truſt for him, againſt whom Execution is ſued, of ſuch Eſtate as the Truſtee was ſeiſed at the Time of Execution ſued.

But upon an *Elegit* the Sheriff cannot extend a Copyhold. *R.* 1 *Rol.* 888. *l.* 1. *Vide Copyhold,* (R. 18.)

Nor a Term for Years of a Copyhold made by the Licence of the Lord. *R.* 1 *Rol.* 888. *l.* 3.

Nor Lands of which the Defendant is diſſeiſed, whilſt they are in Poſſeſſion of the Diſſeiſor. *R.* 1 *Rol.* 888. *l.* 7.

Or, of which he has only the Truſt, and not the Eſtate in Law. *R.* 1 *Rol.* 888. *l.* 12. But this is altered by the *St.* 29 *Car.* 2. 3.

Nor, ſince the *St.* 29 *Car.* 2. 3. Lands which the Truſtee has aliened before Execution; for they are not bound by the Judgment. *R. per C. B.*—*An. inter Johnſon and* ——*cited per Tracy.* (*Vide Comyns's Rep.* 227.)

Nor the Land of a Villein upon an *Elegit* againſt the Lord; for it is the Land of the Villein, till the Lord ſeiſes it. 1 *Rol.* 888. *l.* 20.

Nor a Tenement which cannot be granted, or aſſigned over: as, the Office of Philizer; for it is an Office of Truſt. *Dy.* 7. *b.*

So a bare Rent-ſeck without Land cannot be extended. *R. Cro. El.* 656.

So, if two have Judgment, and one ſues an *Elegit*, and has a Moiety, and afterwards the other ſues an *Elegit*; the Sheriff ſhall deliver but a Moiety of the Reſidue. *R. Cro. El.* 482. *Cont. Fitz. Execution* 137. but there ſaid, *Quod mirum.* *R. M.* 32 & 33 *El. in C. B. Br. Jud.* 78. *Hard.* 25, 6. *R.* 2 *Brownl.* 97.

Yet if both Judgments are of the ſame Term, which is but one Day in Law, each may take a Moiety of the Whole. *R. Per* 3 *Bar. Hard.* 27.

If the Judgment be reverſed, the Sale and Delivery of a Term extended upon the *Elegit* ſhall be void. *R.* 2 *Cro.* 246. *Dy.* 363. *a. in Marg. Cl.* 180.

After Inquiſition taken by the Sheriff, it ſhall be returned and filed. *Dy.* 100. *in Marg.*

And

And after it is filed, it ſhall not be avoided upon Surmiſe that more is extended than a Moiety. 2 *Inſt.* 396.

Or, that it was extended at a ſmall Value. 2 *Ca. Ch.* 183.

And tho' the Extent was at an Under-value, the Plaintiff ſhall account only for the Value at which the Extent is. *R.* 2 *Ca. Ch.* 183.

But before Inquiſition filed, the Court may examine it, and if they find Fraud, Partiality, *&c.* may ſtop the filing, and award a new *Elegit*. 2 *Inſt.* 396.

So, if they find an Extent made at an Under-value. 2 *Ca. Ch.* 183.

So, if the Whole due upon the Judgment be brought into Court. *R.* 2 *Ca. Ch.* 183.

So, if the Inquiſition appears to be void, it may be quaſhed after it is filed. *Semb.* 1 *Vent.* 259.

And in Ejectment Advantage may be taken of the Nullity. *R.* 1 *Lev.* 160. *Per Hale*, 1 *Vent.* 259. *R. Sal.* 563.

As, if more than a Moiety appears to be extended. 1 *Vent.* 259. *Sal.* 563.

Or, all in one Vill, and nothing in another. *R.* 1 *Lev.* 160.

The Entry of the *Elegit* upon the Record, ſhould not in Prudence, be made till the Return filed. 2 *Cro.* 339. *Godb.* 257.

After the Inquiſition returned, there ſhall be a *Liberate*, if the Plaintiff will. *Vide Statute-Staple*, (D. 6.)

Yet before the *Liberate*, or Inquiſition returned, the Plaintiff may enter. *R.* 1 *Rol.* 738. *l.* 10.

And if the Sheriff returns that he has delivered, when he has not, an Action on the Caſe lies for a falſe Return; tho' the Plaintiff may enter without it. *R.* 1 *Rol.* 738. *l.* 15.

Tenant by *Elegit* has but a Chattel. 2 *Inſt.* 396.

Yet he ſhall hold *ut liberum Tenementum*; and he, his Executor, or Adminiſtrator ſhall have an Aſſiſe. 2 *Inſt.* 396.

After the Debt ſatisfied upon Record, or by the annual Rent, at which the Extent is made, the Defendant may enter. 2 *Inſt.* 396. 2 *Vent.* 336.

But if the Debt be ſatisfied by a caſual Profit, he ought to have a *Scire facias* before Entry. 2 *Inſt.* 396.

So, if he brings a *Scire facias*, and tenders all that remains ſatisfied, he ſhall have his Land. 2 *Ca. Ch.* 183.

## (D) To what Time an Execution relates.

### (D. 1.) As to Land.

BY the Common Law, the Lands of the Defendant were bound by the Judgment; and therefore, before the *St.* 29 *Car.* 2. 3. The Plaintiff might have had his Execution of Lands, which the Defendant had at the Time of the Judgment given, or afterwards. 30 *Ed.* 3. 24. *Dy.* 306. *b.* 1 *Rol.* 892. *l.* 37. 2 *Inſt.* 395.

the time of signing judgment is appointed by 29 Car.

Or, at the firſt Day of the Term, in which Judgment was given; for the Term is but one Day. *R.* 42 *Aſſ.* 17. *Bro. Elegit* 17, 19. 1 *Rol.* 892. *l.* 40.

Tho' the Judgment was ſigned after the Term. 2 *Mod. Ca.* 310.

Or, at the Day of the Inqueſt taken; for this is but one Day with the Day in Bank. 21 *Ed.* 3. 51. *b.* *Adm. Dy.* 149. *a.*

And the Plaintiff ſhall have Execution of Lands, which the Defendant had at the Time of the Judgment, tho' he had aliened them *bonâ fide* before Execution ſued. 30 *Ed.* 3. 24.

Tho' a Statute be afterwards acknowledged, and Execution upon it. 1 *Brownl.* 37, 8.

So the Demandant ſhall have Execution againſt the Vouchee of Lands, which he had at the Time of the Voucher; for this is in lieu of an Action. *Co. L.* 102. *a.*

And in a *Warrantiâ Chartæ*, of Land, which the Defendant had the Day of the Writ purchaſed. *Co. L.* 102. *a.*

By the *St. de Merc.* 13 *Ed.* 1. (to which the *St.* 27 *Ed.* 3. and 23 *H.* 8. 6. relate) the Conuſee of a Statute ſhall have Execution of the Lands, which the Conuſor had at the Time of the Conuſance.

And if it be acknowledged before a Judge out of Term, when entred upon Record, it relates to the Time of the Acknowledgment. *R. Hob.* 195. 1 *Rol.* 892. *l.* 35.

So, if after a Statute, a Judgment be againſt him, and Execution by *Elegit*, the Land at the Time of the Conuzance ſhall be extended, and the Execution by *Elegit* avoided. 1 *Brownl.* 37.

If a Judgment be in *Trinity* Term, which relates to the firſt Day, (which was 20th *June*,) and a Statute be acknowledged 20th *June*, Execution upon the Judgment ſhall precede the Statute. *Lat.* 53.

So, if there be a *Capias ad Satisfaciendum*, and then an Extent, and before an Inquiſition taken, the Defendant ſells his Goods, they ſhall be liable to the Extent. *R. Mo.* 21.

But a Judgment in a Perſonal Action binds Lands only from the Day of the Judgment given. *Co. L.* 102. *a.*

And therefore, by the Common Law, the Plaintiff ſhall not have Execution of Land, which the Defendant had the Day of the Writ purchaſed. 42 *Ed.* 3. 11. *R.* 2 *H.* 3. 14. 6 *Ed.* 3. 15.

Or, at the Time of his Plea, if it be in the ſame Term, before Judgment. 42 *Ed.* 3. 11. *R.* 42 *Aſſ.* 17.

Or, at the Day of the Inqueſt returned, or Inqueſt taken, if it was afterwards adjourned; for then it is not one with the Day in Bank. 21 *Ed.* 3. 51. *b.* 1 *Rol.* 892. *l.* 7.

So, now, by the *St.* 29 *Car.* 2. 3. The Officer ſhall ſet down the Day of the Month and Year of his ſigning Judgment on the Paper, *&c.* he ſigns, which ſhall be entred on the Margin of the Record, where the Judgment is entred: and ſuch Judgments ſhall relate, againſt Purchaſers *bonâ fide* for valuable Conſideration of Lands, *&c.* only to the Time of Signing; and not to the firſt Day of Term when enter'd, Return of the Original, or filing Bail.

And by *the ſame Statute*, The Day of Inrolment of a Recognizance ſhall be enter'd on the Margin of the Roll; and no Recognizance ſhall bind Lands, *&c.* in the Hands of a Purchaſer *bonâ fide* for valuable Conſideration, but from the Time of ſuch Inrolment.

And therefore, if Judgment be pronounced, but not entred upon the Roll till ſeveral Terms afterwards; it ought not to be entred without Continuances to the Term when entred: for it ought not to bind a Purchaſer, till that Term. *Mod. Ca.* 184, 191.

Yet if be entred in the Vacation before the Eſſoin-Day of the next Term, it binds a Purchaſer after the Term, before Entry. *Per Holt*, *Mod. Ca.* 191.

## (D. 2.) As to Goods.

By the Common Law, Goods and Chattels are bound by the Award of Execution; and if they are afterwards ſold *bonâ fide*; yet they may be taken in Execution. *R.* 2 *H.* 4. 14. 1 *Rol.* 893. *l.* 10. *R. Mo.* 873. *R. Cr. El.* 174. *D.* 8 *Co.* 171. *a.* 2 *Cro.* 451. *Cro. Car.* 149.

So,

So, if the Defendant dies, they might be taken in the Hand of his Executor or Adminiſtrator. *R.* 1 *Rol.* 893. *l.* 23. *R. Cro. El.* 181. 1 *Leo.* 144.

But a Sale after the Original, and before Judgment, ſhall be good. *R.* 9 *H.* 6. 57. *b.* 1 *Rol.* 893. *l.* 5.

And now, by the *St.* 29 *Car.* 2. 3. No *Fieri facias*, or other Writ of Execution, ſhall bind the Property of Goods, but from the Time ſuch Writ ſhall be delivered to the Sheriff, *&c.* to be executed, who, on his Receipt of it, ſhall endorſe the Day of his receiving the ſame.

And therefore, if a Writ of Execution be ſued, it does not bind, till it be delivered to the Sheriff.

If it be delivered to him, and no Warrant prayed upon it, and afterwards another Execution is delivered, and Execution prayed, he may execute the laſt firſt. *R. M.* 9 *W.* 3. *B. R. inter Smalcomb and Buckingham*, 5 *Mod.* 377. 1 *Sal.* 320.

If it be upon a ſubſequent Judgment, and executed upon Goods, it ſhall be good, tho' an Execution upon a former Judgment or Statute afterwards comes to the Sheriff. *R.* 1 *Brownl.* 37.

Yet it binds the Goods (as to the Party himſelf, tho' not as to a Purchaſer or Stranger) from the *Teſte* of the Writ, as before that Statute. *R. P.* 3 *W. & M. in B. R. Skin.* 257. 2 *Mod. Ca.* 310.

And therefore, if a *Fieri facias* be teſte'd before the Death of the Defendant, and delivered to the Sheriff after his Death; it may be executed upon Goods in the Hands of the Executor, or Adminiſtrator. *Semb.* 2 *Vent.* 218. *R. Skin.* 257.

So, if two Writs are delivered to the Sheriff the ſame Day to make Execution, without Aſſent of Delay, he ought in the firſt Place to make Execution upon the firſt. *R.* 1 *Sal.* 320.

## (E) By whom it ſhall be ſued.

*Vide Pleader*, (3 B. 9, 10.) *By, or againſt whom Error ſhall be ſued.*

EXECUTION ought to be ſued by him, who is Party or Privy to the Record.

In a Real Action, if the Demandant dies, his Heir ſhall ſue Execution.

In Perſonal Actions, the Executor, or Adminiſtrator ſhall ſue Execution by *Scire facias* upon a Judgment by his Teſtator, or Inteſtate. 2 *Inſt.* 395.

When an Executor, or Adminiſtrator ſhall have a *Scire facias* or not, *Vide in Adminiſtration*, (G.)—*Pleader*, (3 L. 5.)

So, in Annuity, the Executor ſhall have Execution, and not the Heir; for by Recovery the Arrearages are a Chattel veſted. 1 *Rol.* 889. *l.* 25.

So, in a Mixt, or Real Action, where Damages are recovered, tho' the Heir has Execution of the Land, the Executor ſhall have Execution for the Damages: as, in Waſt, Aſſiſe, *&c.* 1 *Rol.* 889. *l.* 30.

But it does not lie by him, who is not Party or Privy, generally. *Vide Pleader*, (3 L. 5, 7.)

Nor by him, who has no Intereſt in the Thing recovered, tho' he be Privy, or Party: as, it does not lie by a Huſband upon a Judgment by him and his Wife as Executrix. *R.* 1 *Rol.* 889. *l.* 10. *Vide Baron and Feme*, (Z.)—*Pleader*, (3 L. 7.)

(F) Againſt

## (F) Againſt whom.

SO Execution ought to be ſued againſt him, who is Party or Privy. *Vide Ante*, (A. 2.)

If one of the Defendants dies, it may be ſued againſt the Survivor and him who is dead. *R.* 1 *Sal.* 319. *Vide infra.*

So, if Judgment be againſt Huſband and Wife, and one dies, Execution may be againſt the Wife if ſhe ſurvives. 1 *Rol.* 890. *l.* 27.

So, if a *Scire facias* be againſt all the Defendants, and one is returned *Nihil*, Execution may be for the Whole againſt the others. 1 *Rol.* 890. *l.* 10. 50.

So, if a Defendant dies, Execution may be by *Scire facias* againſt his Executor, or Adminiſtrator. *Vide Pleader*, (3 L. 6.)

And, if the Writ be teſte'd before his Death, it may be executed againſt his Executor, or Adminiſtrator, without a *Scire facias*. *Vide Ante*, (D. 2.)

So, if the Plaintiff dies, Execution may be made without a *Scire facias*. *Dy.* 76. *b. in Marg.* *Vide Pleader*, (3 L. 1.)

But Execution taken out after the Death of the Defendant, againſt his Executor or Adminiſtrator, without a *Scire facias*, is void. *Dy.* 76. *b.*

So, if it be taken againſt the Survivors, where one of the Plaintiffs in Error dies, without Entry of the Death on the Roll, and Award of Execution againſt the Survivors. *R.* 5 *Mod.* 339. *R.* 1 *Sal.* 319.

So Execution may be againſt a Party to a Judgment, tho' he be miſnamed in his Addition, or Degree: for he is eſtopped by the Record to ſay, that he is not of ſuch Degree. *R.* 1 *Rol.* 890. *l.* 45.

## (G) By whom it ſhall be done.

EXECUTION, regularly, ought to be directed to the Sheriff of the County, where the Action was brought. 1 *Rol.* 891. *l.* 15. *Vide Bail*, (R. 2.)—*Pleader*, (3 L. 3.)

And the Sheriff makes a Warrant to his Bailiff to do Execution purſuant to the Writ.

So the Sheriff may do Execution after his Diſcharge is teſte'd, or ſealed, if he has not Notice. *R. Cro. El.* 440. *Vide County*, (B. 3.)

But upon a Return, that the Defendant has Nothing in his County, a Writ of Execution may be to the Sheriff of another County. 1 *Rol.* 891. *l.* 17. *Vide Proceſs*, (E. 7.)

Yet, if a *Teſtatum*, goes where a former Writ was not actually iſſued; tho' it be recited in the *Teſtatum*, it will be Error. *R.* 2 *Cro.* 246. *Yel.* 179.

## (H) When Execution may be after a former Execution.

*Vide Ante*, (A. 3.)

IF a former Execution be not effectual, the Plaintiff, generally, may have another Execution: as, if the Defendant eſcapes, he may be retaken by the Sheriff, or the Party himſelf, and ſhall be in Execution again. *Vide Eſcape*, (E.)

*A fortiori* if he eſcapes, when taken upon a *Capias Utlagatum*, or *Capias pro Fine*; for the Plaintiff need not allow, that he ſhall be in Execution for *him.* 1 *Rol.* 901. *l.* 15. *Vide Ante*, (B. 2.)

If a Man in Execution be bailed by the Court, he may afterwards be taken in Execution again. *Per Co.* 1 *Rol.* 903. *l.* 1.

So, by the *St.* 11 *H.* 6. 5. If he brings an *Audita Querela*, and finds Mainprize thereon, but afterwards does not proſecute with Effect. 1 *Rol.* 902. *l.* 50.

So, if he be delivered out of Execution by Privilege of Parliament, being a Burgeſs, *&c.* he may afterwards be taken in Execution again. *R.* 1 *Rol.* 903. *l.* 20. *Godb.* 373.

So, if the former Execution be defeated by Error. *R. Godb.* 272. *Lat.* 193.

So, by the *St.* 21 *Jac.* 24. If a Man dies in Execution, it may afterwards be ſued of his Land or Goods.

So, before that Statute: for the Body was not a Satisfaction, but a Pledge only for the Debt. *R.* 5 *Co.* 87. *R. cont. Cro. El.* 850. 2 *Cro.* 136, 143. *R. cont. per* 3 *J. Hob.* 60. *Mo.* 858. 1 *Rol.* 903. *l.* 40.

So, ſince that Statute, ſhall it be without Queſtion.

So, if one of the Defendants eſcapes, the Plaintiff may afterwards ſue Execution againſt the other, tho' he has a Remedy againſt the Sheriff. *R.* 5 *Co.* 86. *b.* *Cro. El.* 555, 573. *Cont. Mo.* 459. *R. acc.* 2 *Cro.* 532. *R. Cro. Car.* 75. *Vide Eſcape*, (E.)

So, if the Conuſor upon a Statute or Recognizance eſcapes, the Conuſee ſhall have Execution againſt his Lands and Goods. *R.* 5 *Co.* 86. *b.* 87. *b.*

So, if only Part of the Debt be levied, there may be another Execution for the Reſidue.

If, upon an Extent, *Non inventus eſt* is returned, *quoad* the Body of the Party, and, Land in right of his Wife; tho' he take the Land, he ſhall afterwards have a *Capias* againſt the Perſon. *R.* 15 *H.* 7. 15.

So, if Part of the Debt be levied by a *Fieri facias*, he may afterwards have an *Elegit*. 1 *Sid.* 91.

So, if an *Elegit* be returned *Nichil*, or nothing can be extended upon it, there ſhall be another Execution. *Vide infra.*

So, if only Part of the Debt be levied by *Elegit*, on the Goods only, he may have Debt upon the Judgment for the Reſidue. *R.* 1 *Lev.* 92.

So the Plaintiff after Judgment may have a *Capias ad Satisfaciendum* and a *Fieri facias* together, and execute the one or the other: but if he takes the Defendant upon the *Capias ad Satisfaciendum*, the *Fieri facias* ſhall be quaſhed. 2 *Mod. Ca.* 302.

But, if the Plaintiff has full Execution and Satisfaction, he ſhall never afterwards have a new Execution for the ſame Cauſe. *Mo.* 29.

Tho' the Execution be afterwards defeated by the Act of God: as, if a Villein be delivered in Execution for a Debt, and he afterwards dies without Iſſue. 5 *Co.* 87. *a.*

So, if the Sheriff levies the Debt of the Goods, or extends the Lands of the Defendant, and delivers them to the Plaintiff; for then the Plaintiff accepts the Goods and Lands in Satisfaction. 5 *Co.* 87. *a.*

So, if the Plaintiff had Execution and Satisfaction againſt one of the Defendants, he ſhall not afterwards have Execution againſt the other. *R.* 2 *Cro.* 538. 1 *Rol.* 9. *Vide Action*, (K. 4.)

Tho' it be in Debt, where they are bound jointly and ſeverally. 1 *Rol.* 896. *l.* 20, 25.

Tho' ſeveral Actions are ſued againſt each ſeverally. 1 *Rol.* 896. *l.* 25.

So, in Treſpaſs againſt ſeveral, if the Plaintiff has Execution and Satisfaction againſt one, he ſhall not afterwards have Execution againſt the others. *R.* 1 *Rol.* 896. *l.* 30.

Tho' he recovers by ſeveral Actions in ſeveral Courts. 1 *Rol.* 896. *l.* 35.

Yet where the Defendant cannot plead, as, where there is a Recovery by ſeveral Actions, the Defendant cannot be relieved but by *Auditâ Querelâ*. *R.* 1 *Rol.* 896. *l.* 40, 45.

So, if the Plaintiff has Judgment againſt the Principal, and alſo againſt the Bail, and Execution againſt the Principal, he ſhall not afterwards have Execution againſt the Bail. 2 *Cro.* 320. *Vide Bail*, (R. 11.)

So, if he has the Principal in Execution, tho' he be not ſatisfied; for he has made his Election. 1 *Rol.* 897. *l.* 10. *R. cont.* 2 *Jon.* 75. 1 *Vent.* 315.

So, if he takes Execution againſt the Bail, and has Satisfaction, he ſhall not afterwards have Execution againſt the Principal.

Otherwiſe, if he has not Satisfaction againſt the Bail; for then he may reſort to the Principal. *Cont.* 1 *Rol.* 897. *l.* 7. 2 *Cro.* 320. 2 *Bul.* 68. *R. acc.* 2 *Cro.* 549. *R.* 1 *Sid.* 107. 1 *Vent.* 315. *Vide Bail*, (R. 11.)

So, tho' he has Execution againſt one of the Bail, if he be not ſatisfied, he may have Execution againſt the other. 1 *Rol.* 897. *l.* 15. *R.* 1 *Lev.* 226. *Vide Bail*, (R. 11.)

So, if a Man has Execution by *Elegit* returned, *ſerved*, upon Record, he ſhall not afterwards have Execution by *Capias ad Satisfaciendum*; for he has made his Election. *R. Hob.* 2. *in Marg.* 30 *Ed.* 3. 24. 2 *Inſt.* 395. 1 *Lev.* 92. *R.* 2 *Cro.* 338. 1 *Rol.* 9. *R.* 15 *H.* 7. 15. 2 *Bul.* 97.

Nor, by *Fieri facias*, or other Execution. 1 *Lev.* 92.

Otherwiſe, if the *Elegit* be returned *Nichil*. *Q. Hob.* 2. *D. Hob.* 57. 1 *Lev.* 92. 1 *Leo.* 176. And it be entred on the Roll. *Br. Jud.* 78.

Or, the Land cannot be extended, by Reaſon of a prior Extent. *R. Cr. El.* 160. 1 *Leo.* 176.

Or, the Writ be imbeziled. 1 *Rol.* 8.

So, if upon an *Elegit* an Extent be made, but the *Liberate* not returned, and the Entry upon Record is, *Vicecomes nihil inde fecit, nec miſit Breve*, another *Elegit* may be ſued. *R.* 2 *Leo.* 13.

## (I. 1.) By what Court Execution ſhall be granted.

REGULARLY, Execution ought to be granted by the ſame Court where the Judgment was given.

If an Attaint be in *B.* upon a Judgment in *B. R.* and Judgment affirmed; Execution ought to be in *B. R.* and not in *B.* where they have only *Teſte rem Recordi*. *R.* 1 *Rol.* 887. *l.* 40.

If a Man recovers in a *Scire facias* upon a Recognizance in *B. R.* and in Debt upon that Judgment in *C. B*; he may afterwards ſue Execution out of the Record in *B. R.* *Dy.* 306. *a. in Marg.*

But if a Record comes into *B. R.* by Writ of Error, and the Judgment be affirmed, Execution may be ſued there. 1 *Rol.* 884. *l.* 32. *R.* 1 *Lev.* 134. *Vide Pleader*, (3 B. 20.)

So, if it comes into *B.* upon a Writ of falſe Judgment, Execution may be ſued there. 1 *Rol.* 884. *l.* 35.

So, if a Record comes into *B. R.* by Error out of an inferior Court, whereby the Recognizance of Bail, being upon the Roll, is alſo removed thither; a *Scire facias* lies againſt the Bail out of *B. R.* *R.* 1 *Sid.* 213.

So, if Judgment in *C. B.* be affirmed upon Error in *B. R.* a *Certiorari* lies to remove the Recognizance of Bail to *B. R.* by which a *Scire facias* may iſſue againſt the Bail out of *B. R.* *R.* 4 *Mod.* 104. *Sho.* 344.

Yet if Judgment in *Ireland* be affirmed in *B. R.* here, and Costs here; there shall not be Execution out of *B. R.* directed to the Sheriff in *Ireland*; but there shall be a Writ, reciting the whole Proceeding here, directed to the Judges of *B. R.* in *Ireland*, commanding them to issue Execution; by which the Cause is remanded to them. *R.* 1 *Sal.* 321. 5 *Mod.* 421.

So a Judgment cannot be removed out of an inferior Court, by *Certiorari* and *Mittimus* into *B. R.* to have Execution by *Scire facias* there. *R. Hut.* 117. 1 *Lev.* 134.

## (I. 2.) By an Inferior Court.

In a Court-Baron the Plaintiff may distrain the Goods of the Defendant, and detain them; till the Condemnation be satisfied; tho' he cannot levy it of the Goods of the Defendant. 1 *Rol.* 887. *l.* 35.

So Judgment in an inferior Court shall not be executed upon Land or Goods out of the Jurisdiction.

If there be a Recovery in *Antient Demesne*, it shall not be levied of Land, held of the Manor, which is *Frank-Fee*; for that is out of the Jurisdiction. 1 *Rol.* 894. *l.* 17.

So a Judgment in an inferior Court of Record shall not be removed by *Certiorari* into *B. R.* to have Execution of it there. *Dub.* 1 *Rol.* 887. *l.* 45. 1 *Lev.* 134.

## (I. 3.) How it shall be awarded.

Execution ought to be sued conformable to the Judgment: and therefore, if the Judgment be joint against divers Persons, Execution ought to be against all together. *R.* 1 *Rol.* 888. *l.* 30, 35.

Tho' it be in an Assise, *&c.* where Damages are not the Principal, a Man cannot sue Execution for Damages against one only, when the Judgment was against several. *R.* 1 *Rol.* 888. *l.* 25.

So he cannot take a *Capias* against One, and an *Elegit* against Another. 1 *Rol.* 888. *l.* 35.

So, if there be an Information for Recusancy, on which Judgment is given for 100 *l.* tho' the King shall have two Parts and the Informer one, yet there shall be but one Execution, and not several, *viz.* one for the King and another for the Informer. *R.* 1 *Rol.* 888. *l.* 45.

But, if Judgment be against Bail, the Execution may be against each of them severally, without naming the other; for each Bail is bound severally. 1 *Rol.* 888. *l.* 40. *R.* 1 *Lev.* 226. *Vide Bail*, (R. 11.)

If the Defendant confesses the Action as to Part, and joins Issue as to the Residue; the Plaintiff shall not have Execution for the Part confessed, except where he releases his Damages for the Residue. 1 *Rol.* 898. *l.* 35.

But, if the Plaintiff releases his Damages, he may have Execution for the Part confessed immediately, 1 *Rol.* 898. *l.* 37.

Or, if he be nonsuited upon the Issue. 1 *Rol.* 898. *l.* 40.

So the Plaintiff may have Execution immediately after Judgment pronounced and signed by the Clerk, tho' it be not entred upon the Roll. 1 *Rol.* 899. *l.* 5.

## (I. 4.) *Scire facias quare Executionem non, &c.*

By the Common Law, a Plaintiff could not have Execution upon a Judgment or Recognizance after a Year and a Day passed; but ought to commence an Action of Debt upon the Judgment, or Recognizance. 2 *Inst.* 469. *Co. L.* 290. *b.* *Vide Pleader*, (3 L. 1, *&c.*)

But

But now, by the *St. W.* 2. 13 *Ed.* 1. 45. he may have a *Scire facias quare Executionem non, &c.* and if the Defendant *non venerit, aut nihil sciat dicere, quare Executionem non, &c. præcipiatur Vicecomiti quod exequi faciat. Vide* 2 *Inst.* 469.

And after a Year and a Day he ought to have a *Scire facias* before Execution; for if he sues a *Capias ad Satisfaciendum, &c.* after the Year, it is not only erroneous, but void. *R.* 4 *Leo.* 197. *Semb. Lat.* 193. *Cont. Semble* for the Defendant was put to his *Audita Querela.* 2 *Rol.* 42.

So, within the Year, he ought to have a *Scire facias*, where the Recovery is of a Reversion or Remainder after a Term for Years. 1 *Co.* 94. *b.*

But there needs no *Scire facias*, if Error be brought of the Judgment within a Year after the Judgment, till a Year and a Day after the Error or Judgment thereon affirmed. *R.* 5 *Co.* 88. *a. Vide Pleader*, (3 L. 4.)

So, if a Recognizance be to be paid at a future Day within a Year, there needs no *Scire facias* till a Year and a Day after the Time of Payment. 1 *Rol.* 899. *l.* 52.

So, if there be Judgment in Annuity, Execution may be without a *Scire facias* upon every Payment, which accrues, tho' it be above a Year after the Judgment. 1 *Rol.* 900. *l.* 5.

So, if a *Fieri facias*, or *Elegit*, be sued, and no Execution thereon, there may be another *Fieri facias*, or *Elegit* several Years after, without a *Scire facias*, if Continuances are entred from the first *Fieri facias*, or *Elegit.* 1 *Sid.* 59.

So, if Judgment be with *Cesset Executio*, by Agreement, till such a Time, there needs no *Scire facias* till a Year and a Day after the Time agreed; tho' such *Cesset, &c.* is not entred upon the Roll. *Mod. Ca.* 288.

So, where the Entry of the Demandant is *congeable*, there needs no *Scire facias. Dy.* 376. *b. in Marg.*

So, in Ejectment; there needs no *Scire facias*: for the *St. W.* 2. extends only to Personal Actions. *Skin.* 427. *R.* 1 *Sid.* 351. *R. cont. Sal.* 258, 600.

## Execution in Accompt.

*Vide Accompt*, (E. 16.)

## ——— in Annuity.

*Vide Annuity*, (H.)

## ——— against Bail.

*Vide Bail*, (R. 11.)—*Ante*, (C. 9.—G.—I. 3.)

## ——— in a County-Court.

*Vide County*, (C. 13.)

## ——— in Covenant.

*Vide Pleader*, (2 V. 18.)

## ——— in a Court-Baron.

*Vide Copyhold*, (R. 18, 19.)

## Execution of a Decree.

*Vide Chancery*, (Y. 4.)

## —— for a Fine at the Sessions.

*Vide Justices of Peace*, (D. 15.)

## —— of a Foreign Sentence.

*Vide Admiralty*, (E. 17.)

## —— against an Heir.

*Vide Pleader*, (2 E. 6.)

## —— of a Peer.

*Vide Parliament*, (L. 45.)

## —— of a Power.

*Vide Chancery*, (4 H. 5, &c.—4 O. 6.)—*Poiar*, (C. 1, &c.)

## —— in a Quo Warranto.

*Vide Quo Warranto*, (C. 7.)

## —— in Replevin.

*Vide Pleader*, (3 K. 31.)

## —— of Orders of Commissioners of Sewers.

*Vide Sewers*, (H. 3.)

## —— upon a Statute or Recognizance.

*Vide Statute-Staple*, (D. 1, &c.)

## —— of a Trust.

*Vide Chancery*, (4 W. 9.)

## Execution pleaded to Debt upon Judgment.

*Vide Pleader*, (2 W. 36.)

## Remedy for Rent by Payment of the Sheriff upon an Execution.

*Vide Rent*, (D. 8.)

## EXECUTOR.

*Vide Abatement*, (E. 13.—F. 10.)—*Administration.*—*Administrator*, (C. 1, &c.)—*Biens*, (C.)—*Chancery*, (3 G. 1, &c. —4 A. 9.)—*Covenant*, (B. 1.—C. 1.)—*Obligation*, (I. 1.) —*Pleader*, (2 D. 1, &c.—3 L. 12.)—*Prohibition.* (G. 21.)

## EXECUTORY DEVISE.

*Vide Deviſe*, (N. 16, 17.)

## EXEMPLIFICATION.

*Vide Evidence*, (A. 2.)—*Fine*, (G. 3.)

## EXEMPTION.

*Vide Challenge*, (A. 4.)—*Diſmes*, (H. 15.)—*London*, (L. 1, &c.)—*Prærogative*, (D. 33.)

## EXIGENT.

*Vide Pleader*, (2 W. 4.)—*Utlagary.*

## EXIGENTER.

*Vide Courts*, (C. 5.)

## EXILE.

*Vide Chancery*, (2 M. 15.)—*Parliament*, (H. 7.)

## EX OFFICIO.

*Vide Information*, (A. 2.)—*Viſitor*, (A. 12.)

# EXOINE.

## (A) Exoine, or Eſſoine: The ſeveral Kinds.

AN *Exoine* or *Eſſoine* ſignifies an Excuſe for Non-appearance at the Return of Proceſs. 2 *Inſt.* 125. *Lut.* 861. *b.*

And it lies in Real Actions for the Demandant, or Tenant; or in Mixt. 2 *Inſt.* 125.

So, in Perſonal Actions for the Plaintiff, or Defendant. 2 *Inſt.* 125.

There are five Kinds of Eſſoins. 1. *De Servitio Regis.* 2. *In Terram Sanctam.* 3. *Ultra Mare.* 4. *De Malo Lecti.* 5. The Common Eſſoin *De Malo Veniendi.* 2 *Inſt.* 125.

In all, except the Common Eſſoin, the Demandant ſhall be delayed for a Year and a Day. 2 *Inſt.* 137, 252.

And the Party ought to ſwear to the Truth of his Eſſoin: for the *St. Marlb.* 19. is to be underſtood only of the Common Eſſoin. 2 *Inſt.* 137.

## (B. 1.) In what Actions it lies.

AN Eſſoin lies, regularly, in all Actions Real, and Mixt. 2 *Inſt.* 125.

As, in Writs of Right, and Entry.

So, if an Aſſiſe abates by the *Non Venue* of the Juſtices, *&c.* upon a Reattachment the Tenant may be eſſoined. 2 *Inſt.* 249.

So, upon a Reſummons in an Aſſiſe of *Mord'anceſtor.* 2 *Inſt.* 249.

Or, if an Aſſiſe be adjourned from *Cheſter*, upon a foreign Plea, to *C. B:* for the Plea there is not the Plea of Aſſiſe. 2 *Inſt.* 249.

So, tho' the Eſſoin in Perſonal Actions was an Abuſe, yet it was allowed. 2 *Inſt.* 125. 1 *Brownl.* 193.

## (B. 2.) By what Perſons.

An Eſſoin, by the Common Law, was allowed for the Demandant or Plaintiff, as well as for the Tenant or Defendant. 2 *Inſt.* 125.

So, for the Vouchee upon the Return of the Summons *ad Warrantizandum.*

And for the Prayee in Aid, upon the Return of the Summons *ad Auxiliandum.*

So the Attorny of the Tenant or Defendant may have the Common Eſſoin, but none other. 2 *Inſt.* 394.

And if he has two Attornies, one may be eſſoined without the other; for their Power is joint, and ſeveral.

If the Tenant caſts an Eſſoin for him and his Attorny, it is only Surpluſage as to one of them. *Hob.* 47.

## (B. 3.) At what Time.

An Eſſoin, by the Common Law, may be caſt at every Day of Appearance.

Before Appearance, or afterwards, before Plea.

Before

Before Iſſue, or afterwards upon the Return of the *Venire facias Jur. &c.*

After *Voucher*, at the Day given for the Appearance of the Vouchee. *R. Hob.* 46.

At the Day given by the Roll for the Return of the *Venire facias*, tho' no *Venire* be ſued. *Hut.* 69.

But the Tenant cannot be eſſoined after the Vouchee has entred into Warranty: for the Matter is then finiſhed by him with the Demandant, and alſo with the Vouchee. *R. Hob.* 47.

So no Eſſoin ſhall be after Iſſue in Dower. *R. Hut.* 69.

Nor in any Real Action upon the Return of the *Habeas Corpora*.

Nor in Perſonal Actions upon Return of the *Hab. Corp.* or *Diſtringas*.

## (B. 4.) In what Manner it ſhall be caſt.

In all, except the Common Eſſoin, the Tenant or Defendant ought to ſwear to the Truth of the Eſſoin: for the *St. Marlb.* 52 *H.* 3. 19. that none *juret pro Eſſonio ſuo*, extends only to the Common Eſſoin. 2 *Inſt.* 137.

If he be eſſoined *de Servitio Regis*, at the Day to which it is adjourned, he ought to bring his Warrant under the Great Seal. *Dy.* 154. *b.* *Vide Poſt*, (E.)

And the Eſſoiner ought to appear in Perſon in Court, that he may be ſworn, and have a Day for his Warrant. 2 *Inſt.* 314.

If the Eſſoin be *de Malo Lecti*, he ſhall have two Eſſoiners, one who caſts the Eſſoin, the other who ſwears that he is ſick. 2 *Inſt.* 393. *Vide Poſt*, (E.)

And it ſhall be caſt only at a Day certain: for he ought to appear the firſt Day, and caſt the Eſſoin the third Day. 2 *Inſt.* 393.

The other Eſſoins ought regularly to be caſt upon the firſt Day, which is the Eſſoin-Day. *Dal.* 3.

And if it be not, a *Ne recipiatur* may be entred the next Day, which is the Day of Exceptions.

But if a *Ne recipiatur* be not entred, the Eſſoin may be caſt on the fourth Day of the Return.

Yet to prevent a *Ne recipiatur*, it muſt be entred upon the Eſſoin-Day, tho' the Writ be not returned till *quartum Diem poſt*. *Dal.* 3.

When an Eſſoin is caſt, if it be not challenged, Day ſhall be always given to the Demandant and Tenant, upon the Common Eſſoin, at the 5th Return after. *Lut.* 862.

And in other Eſſoin, for a Year and a Day.

If the Demandant does not appear at the Day to which it is adjourned, he ought to be non-ſuited. *R.* 2 *Vent.* 117.

So, if his Attorny does not adjourn the Eſſoin.

The Eſſoin ſhall be caſt between the Demandant, and Tenant, tho' granted in Reſpect of the Plea, that may ariſe between Tenant and Vouchee. *R. Hob.* 47.

## (C) When an Eſſoin does not lie.

BUT, by the Common Law, an Eſſoin was not allowed in an Aſſiſe of *Novel Diſſeiſin*, for the Plaintiff, or Tenant. 2 *Inſt.* 249, 418.

Neither was it allowed in *B. R.* for the Plaintiff in any Aſſiſe. 2 *Inſt.* 249.

Nor, for the Tenant in an Aſſiſe of *Mort' danceſtor*. 2 *Inſt.* 249.

By

By the *St. W.* 2. 12. An Eſſoin ſhall not be allowed for the Appellant in an Appeal of Death.

Neither ſhall it be allowed for the Plaintiff, or Defendant in a *Scire facias*. By the *St. W.* 2. 45. 2 *Inſt.* 470.

Nor in other judicial Writ: as, upon a *Grand*, or *Petit Cape*, or Reſummons. *R. Jon.* 331.

So, by the *St. W.* 1. 42. In an Aſſiſe of *Mort d'anceſtor*, Attaint, or *Juris Utrum*, the Tenant ſhall not be eſſoined after Appearance. 2 *Inſt.* 248. Tho' he be only Tenant in Law; as, a Vouchee, *&c.* 2 *Inſt.* 249.

Nor the Demandant. By the *St. W.* 2. 28. 2 *Inſt.* 418.

The Tenant, or Demandant ſhall not have the Common Eſſoin: for every Statute, which ſpeaks in general, ſhall be underſtood of the Common Eſſoin only. 2 *Inſt.* 249.

So an Eſſoin *de Servitio Regis*, or any other than the Common Eſſoin ſhall not be allowed in Dower. 2 *Inſt.* 124.

Nor in a *Quare Impedit*, or *Darrein Preſentment*. 2 *Inſt.* 124, 125.

So an Eſſoin *de Malo Lecti* ſhall not be allowed in a Writ of Right in its Nature, but in a Writ of Right Right only. 2 *Inſt.* 394.

Nor, by the *St. W.* 17. Between Parceners, who claim by the ſame Deſcent. 2 *Inſt.* 493, 394.

So an Eſſoin ſhall not be allowed after Appearance by Attorny, except where the Attorny is removed. *R. Carth.* 45.

And if there be a Challenge of the Eſſoin in ſuch Caſe, there is no need to ſay *quod Attornatus non fuit amotus*. *Per Holt, Carth.* 48.

## (D) When a Man ſhall have only one Eſſoin.

SO, by the *St. Marlb.* 52 *H.* 3. 13. After Iſſue to be tried by Inqueſt, there ſhall be only one Eſſoin.

And by the *St. W.* 2. 27. The Eſſoin ſhall be at the next Day.

And therefore, in all Perſonal Actions, the Defendant, after Iſſue joined by him, to be tried by an Inqueſt, ſhall have only one Eſſoin, and at the next Day of Appearance. 1 *Sal.* 216, 454.

Or, if the firſt Proceſs is not ſerved, or abates, it may be upon the *Alias*: for the firſt was null.

If the firſt Proceſs was not actually ſued, as in the Caſe of a *Venire facias*, it ſhall be at the Day given by the Roll. *Hut.* 69.

So, in Perſonal Actions, if the Defendant was eſſoined before Iſſue, he ſhall not have any Eſſoin after Iſſue. *Godb.* 235, 6.

So, by the *St. W.* 1. 3 *Ed.* 1. 43. Parceners or Joint-tenants cannot fourch; but ſhall have only one Eſſoin.

And therefore, where each has one Eſſoin after Appearance, they cannot afterwards *viciſſim eſſoniare*. 2 *Inſt.* 250.

So, by the *St. Glo.* 6 *Ed.* 1. 10. Huſband and Wife after Appearance cannot fourch, *viz.* in Real Actions. 2 *Inſt.* 321.

So, in a Perſonal Action againſt ſeveral, they all ſhall have but one Eſſoin. *Brownl.* 193.

But the Plaintiff is not reſtrained by the *St. Marlb.* or *W.* 2. but that he may have all Eſſoins, as at Common Law. 2 *Inſt.* 126.

So, if there are ſeveral Tenants or Defendants, each may have one Eſſoin. 2 *Inſt.* 126, 250. *R.* 2 *Vent.* 57.

So, if the Defendant or Tenant in an inferior Court be eſſoined after Iſſue, and then the Plaint is removed; he may have another Eſſoin at the Day in Bank; for the Proceeding before is not of Record there. 2 *Inſt.* 127.

So, if a Prayee in Aid, or to be received, after Iſſue be eſſoined at the Day of the Return of the Summons, he may have another Eſſoin afterwards; for the Statute ſays, *Siquis poſuerit ſe in Inquiſitionem, &c.*

So, if Iſſue be joined not to be tried by an Inqueſt, the Defendant ſhall have another Eſſoin: as, if Iſſue be upon the Cuſtom of *London*, which ſhall be tried by the Certificate of the Recorder. 2 *Inſt.* 126.

So, before Appearance, Parceners or Joint-tenants may have each one Eſſoin: for the *St. W.* 1. 43. relates to Eſſoins after Appearance. *Semb.* 2 *Inſt.* 250, 251. 2 *Vent.* 57.

So, if the Tenant be eſſoined after a View, he may afterwards have an Eſſoin in another Reſpect; as, at the Day given for the Appearance of the Vouchee: for the Tenant may ſay, that the Vouchee is not the ſame Perſon. *R. Hob.* 46.

So, in a Real Action, if the Tenant be eſſoined upon a Proceſs, which is of no Effect, he may be afterwards eſſoined; for the firſt Eſſoin was null: as, if he be eſſoined upon a Summons which was returned *tarde*, wherefore an *Alias* Summons iſſued, he may be eſſoined upon the *Alias*. *Dy.* 252. *a.*

So, if the firſt Summons was not well returned, ſo as that a *Grand Cape* might iſſue by the *St.* 31 *El.* 3. by Reaſon whereof an *Alias* Summons is taken. *R. Hut.* 43. *Jon.* 7.

Tho' the firſt Eſſoin was adjourned. *Hut.* 43.

So, in a Real Action, the Tenant ſhall have an Eſſoin after Iſſue, tho' he had an Eſſoin before: for the *St. Marlb.* does not extend to Real Actions. *R. Godb.* 235, 6.

## (E) The Proceeding after Eſſoin.

AFTER the Eſſoin caſt, if all the Defendants appear, except him who caſt the Eſſoin, the ſame Day ſhall be given to the other Defendants, to which the Eſſoin was adjourned. *Jon.* 331.

If the other Defendants do not appear, the ſame Day cannot be given; but there ſhall be a Default, and a Reſummons ſhall be awarded returnable the ſame Day, if they may ſave their Default. *R. Jon.* 331.

If the Tenant caſts an Eſſoin of *Ultra Mare*, (which comprehends *in Terram Sanctam*,) or *de Servitio Regis*, by the Courſe of the Common Law, the Demandant or Plaintiff ſhall have a Writ out of *Chancery*, reciting that the Tenant, *&c.* is not *ultra Mare*, *&c.* and commanding the Juſtices to proceed; whereupon the Eſſoin ſhall be immediately quaſhed. 2 *Inſt.* 253.

And by the *St. W.* 1. 44. If the Eſſoin *ultra Mare* be adjourned, and the Demandant avers by the Country that the Tenant was within the Realm on the Day of the Summons and three Weeks after, it ſhall turn to a Default.

So, if the Demandant or Plaintiff, eſſoined *de ſervitio Regis*, does not bring his Warrant under the Great Seal, teſtifying that he is in the King's Service, he ſhall be non-ſuited. 2 *Inſt.* 314.

And it muſt be by a Writ under the Great Seal, directed to the Juſtices, which teſtifies his Employment in the King's Service: which is moſt commonly done upon a Certificate of the Captain, under whom he ſerves, to the Chancellor. 2 *Inſt.* 314. *Dy.* 154. *b.*

So, if the Tenant in a Real Action does not bring his Warrant at the Day, it ſhall turn to a Default. 2 *Inſt.* 314.

And by the *St. Gloc.* 6 *Ed.* 1. 8. In Perſonal Actions, if the Defendant does not bring his Warrant, he ſhall render 20 Shillings or more, at the Diſcretion of the Juſtices, to the Plaintiff for his Journey, and ſhall be in the King's Mercy.

And if it be after Iſſue, the Inqueſt alſo ſhall be taken by Default. 2 *Inſt.* 314.

So, by the Common Law, if an Eſſoin *de Malo Lecti* was caſt, four Knights were returned by the Sheriff to inquire *ſi fuerit languidus*, and if found that he was not, he had 15 Days for his Appearance; if found that he was, then he ſhould have a Year and a Day, and before his Appearance there was to be a Writ *de Licentia ſurgendi*. 2 *Inſt.* 393.

But now, by the *St. W.* 2. 17. the Demandant may inſiſt *quod non eſt Languidus*, and if found by Inqueſt that he is not, it ſhall turn to a Default. 2 *Inſt.* 393.

So, in all Caſes, where an Eſſoin ought not to be allowed, the Demandant may challenge it. *Lut.* 862.

If the Challenge be for ſuch Cauſe as appears to the Court to be true, the Eſſoin ſhall be adjudged immediately. *Lut.* 862. *b.*

If a Demurrer be to the Challenge, and the Challenge is allowed, it ſhall be a Default in the Tenant. *Carth.* 48, 49.

And there ſhall be Judgment againſt the Tenant upon his Default without a *Petit Cape*: for when he has relied upon that Matter by Demurring to the Challenge, he cannot afterwards ſave his Default; and then the *Petit Cape* would be vain. *R. Carth.* 48.

But where the Party can ſhew good Cauſe for maintaining his Eſſoin, it ſhall not be adjudged immediately, but ought to be adjourned. *Lut.* 862. *b.*

And if it be not adjourned, it will be Error. *Lut.* 862. *b.*

At the Day to which it is adjourned, the Tenant may diſavow. *Lut.* 865.

Or may demur to the Challenge, and if it be adjudged for him, the Plaintiff ſhall be nonſuited. *Semb. Hut.* 69.

If it be not adjudged for him, it ſhall be a Default. *R. Lut.* 865.

If an Eſſoin be diſallowed, when it ought to be granted, it will be Error. *Hob.* 47.

Otherwiſe, if granted when it need not. *Hob.* 47.

So, if an Eſſoin be adjourned, and Judgment at the Day given by Default, when no Eſſoin was entred, it will be Error. *Dy.* 330. *a.*

Tho' the Entry of the Eſſoin be upon the Plea Roll; if, upon a Certificate of the Eſſoin-Roll, it appears that no Entry was there. *Dy.* 330. *a.*

*Vide Copyhold*, (R. 10.)

# EXPOSITION OF WORDS.

*Vide Agreement*, (C.)—*Chancery*, (3 A. 8.—3 Y. 1, &c.)—*Covenant*, (D 1, 2.—G. 2.)—*Deviſe*, (N. 1, &c.)—*Pardon*, (C.—D.)—*Parliament*, (R. 10, &c.)—*Parols*, (A. 1, &c.)—*Poiar*, (B. 1, &c.)—*Uſes*, (N. 12.)

# EXTENT.

*Vide Execution*, (B. 4, 5.—C. 14.)—*Statute Staple*, (D. 5, 7, 8.)

# EXTINGUISHMENT.

*Vide Chancery*, (4 N. 6, 8, 9.)—*Common*, (L.)—*Confirmation*, (D. 3.)—*Releaſe*, (B. 6.)—*Seigniory*, (B.)—*Suſpenſion*, (B.—C.—G.)—*Uſes*, (L. 6.)

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# EXTORTION.

## (A) What ſhall be.

### (A. 1.) By the Common Law.

*Vide Officer*, (H.)

EVERY Oppreſſion, by Colour of Juſtice or Right, is Extortion. *Co. L.* 368. *b.*

But the proper Signification of the Word is, where an Officer *Colore Officii* unlawfully takes Money, or other valuable Thing from another, which is not due, or more than his Due, or before it be due. *Co. L.* 368. *b.* *Hut.* 53.

And this was a great Miſpriſion and Offence by the Common Law. *Co. L.* 368. *b.* 2 *Rol.* 263.

And therefore, by the Common Law, an Indictment or Information for Extortion lies againſt an Officer, who takes a Fee *Colore Officii*, where Nothing is due: as, if a Judge of an inferior Court takes a Fee for his Judgment. *Semb. per* 2 *J.* 1 *Leo.* 295.

If a Sheriff refuſes to execute Proceſs till his Fee be paid. *R.* 1 *Sal.* 330, 331.

Or takes a Bond for his Fee, before Execution ſued. *R. Hut.* 53.

So, if a Clerk of a Market takes a Fee for the View of Veſſels, *&c.* for there may be nothing due. *R. Mo.* 523.

So, if any Judge or Officer takes more than the uſual Fee. 2 *Rol.* 263. *Vide Officer*, (G. 15.)

So, if a Ferryman takes more for a Ferry, than is due by Preſcription. *Semb.* 4 *Mod.* 101.

If a Commiſſary takes 11*s.* 6*d.* for Abſolution, where he ought to have only 2*s.* 6*d.* 3 *Leo.* 268.

If the Judge of an Eccleſiaſtical Court takes a Fee, *&c.* for aſſeſſing the Goods of an Inteſtate to Charitable Uſes, or for Commutation of Penance, *&c.* 4 *Inſt.* 336. *Vide Adminiſtration*, (B. 8.)

But an Indictment or Information *Contra formam Statuti*, where it was an Offence only by Common Law, ſhall be quaſhed. 1 *Leo.* 295. 2 *Rol.* 263.

## (A. 2.) By Statute.

So, by the *St. W.* 1. 26. *Nul Viſcount ne auter Miniſter le Roy ne preigne Reward pur faire ſon Office mes ſont paies de ceo que ils purnont del Roy. Vide Mad.* 641.

And this Statute, which begins with a Sheriff, extends to every inferior Miniſter, or Officer of the King, whoſe Office concerns the Adminiſtration or Execution of Juſtice, the common Good of the Subject, or the King's Service: as, to an Eſcheator, Coroner, *&c.* 2 *Inſt.* 209. *Vide Officer*, (G. 15.)

To a Bailiff, Gaoler. 2 *Inſt.* 209.

Clerk of a Market, Aulnager. 2 *Inſt.* 209. *Mo.* 523.

So, to the Heralds: for they are Officers of the King, and were before the Statute. *Semb.* 2 *Inſt.* 209.

And ſuch Officer cannot preſcribe to take a Fee for doing his Office. 2 *Inſt.* 210.

So, by the *St. W.* 1. 30. *Lou multz ſe pleignent des Serjeants, Criours de Fee, & les Marſhals des Juſtices in Eyre, et dauters Juſtices quelles pernent a tort deniers de ceux queux recoveront, &c. et de Fine levie, et des Jurors, Priſoners, &c. Roy defende que ceſtes Choſes ne ſoient faits: Et ſi Serjeant de Fee le face, Office ſoit priſe en main le Roy; ſi Marſhal, ſoit punie a volunt le Roy; & l'un & l'auter rendra al Plaintife treble de ceo quels aver' priſe.*

By the *St.* 3 *Geo.* 15. If a Sheriff, *&c.* take any Sum, *&c.* for levying a Debt to Crown, or forbearing to levy it, *&c.* he ſhall be guilty of Extortion, and being convict, *&c.* ſhall forfeit treble Damages and Coſts to the Party aggrieved, and double the Sum extorted; to be decreed by the Barons in two Years after Offence, upon Complaint in a ſummary Way.

So, if a Statute allows a Fee to any Officer, it will be Extortion to take above that which the Statute allows. 2 *Inſt.* 210. *Co. L.* 368. *b.* 2 *Ruſh.* 267.

Or, in any other Caſe. *Co. L.* 368. *b.*

So, where the *St.* 11 *H.* 7. 4. allows a Fee to the Clerk of the Market for ſealing, it will be Extortion if he takes 1 *d.* for his View of Veſſels, when he does not ſeal them, nor find them faulty. *R. Mo.* 523.

So he cannot preſcribe to take a Fee, for the View, when he does not ſeal them, nor find a Defect. *R. Mo.* 523.

So, if the Clerk of the Crown-Office demands 13 *s.* 4 *d.* for a Fee for every Defendant who pleads to an Information, when it is not due, it will be Extortion. *Semb.* 3 *Mod.* 247.

Or, if he takes, where ſeveral are in the ſame Indictment for the ſame Felony or Treſpaſs, above 2 *s.* for the *Venire* and Entry of the Plea for all of them. 3 *Inſt.* 150. *Vide Poſt*, (E.)

So the Chirographer in *C. B.* ſhall not take above 4 *s.* for making and writing any Fine. 3 *Inſt.* 150. *Vide Poſt*, (E.)

Nor the Auditor in the *Exchequer*, or Dutchy of *Lancaſter*, above 3 *s.* 4 *d.* for Inrolment of a Patent, Decree, Grant, or Indenture of Leaſe. 3 *Inſt.* 150.

*Vide Poſt*, (E.)

## (B) What not.

BUT it is no Extortion, if an Officer takes a Fee allowed by Statute. 2 *Inſt.* 210.

So it will not be Extortion, if a Miniſter, or Attendant of Courts of Juſtice takes ſuch reaſonable Fees as have been antiently allowed. *Co. L.* 368. *b.*

So a Sheriff, *&c.* may preſcribe to take a Fee for a Thing, which is not an Act within his Office: as, to take 20*d.* for a Bar-fee of every Priſoner acquitted: for that is not given for doing his Office. 2 *Inſt.* 210.

*Vide Poſt*, (D.)

## (C) The Penalty for Extortion.

EXTORTION is an odious Crime, and accompanied with Perjury. *Co. L.* 368. *b.*

And the Penalty upon a Conviction for Extortion, by the Common Law, was Fine and Impriſonment. *Co. L.* 368. *b.*

By the *St. W.* 1. 26. A Sheriff, or other Miniſter of the King, who ſhall do, *&c.* ſhall render double to the Party, and ſhall be puniſhed at the King's Pleaſure.

And thereon an Action lies for the double Value.

So an Indictment againſt ſeveral for Extortion *Colore Officiorum* is good: for they might take ſo much, and afterwards divide it. 3 *Leo.* 268.

An Indictment or Information for Extortion, where nothing is due, ought to ſay, that nothing was due. *R.* 3 *Leo.* 268.

So, if it was for taking more than was due, it ought to ſhew how much was due. *R.* 3 *Leo.* 268.

## (D) What Fees are allowed.

THE Tables of Fees allowed by Law, or antient Uſage, to the Miniſters of all the Courts of *Weſtminſter*, and to the Curſitors, Clerks of Aſſiſe, and of the Peace, delivered to Parliament, *Vide annexed to the Compleat Attorny.*—[*Vide* alſo *the Order of Chancery of* 28 *Nov.* 1743, as to the Officers of the Court of *Chancery*.]

For the Fees of Clerks, *&c.* of Juſtices in *Eyre*, *Vide* the *St. W.* 1. 3 *Ed.* 1. 27, 29. and the *St. W.* 2. 13 *Ed.* 1. 42.

Of Juſtices of Aſſiſe, *Vide* the *St.* 13 *Ed.* 1. 44.

By the *St.* 27 *Ed.* 3. 9. For ſetting Seal to a Statute-Staple ſhall be paid an Halfpenny *per* Pound, or if above 100*l*, only a Farthing *per* Pound.

By the *St.* 12 *R.* 2. 10. Juſtices of Peace ſhall have 4*s.* *per Diem* at the Seſſions, and the Clerk 2*s.*—So, 5*s.* to a Juſtice of Peace for Execution of the *St.* 5 *El.* 4.

For Fees of the Marſhalſea, *Vide* the *St.* 2 *H.* 4. 23.

By the *St.* 17 *Ed.* 4. 4. Searchers of Tiles may take 1*d.* *per* 1000 of plain Tile, $\frac{1}{2}d.$ *per* 100 rough, $\frac{1}{2}d.$ Gutter Tile.

By the *St.* 11 *H.* 7. 4. Mayor, *&c.* may take 1*d.* for marking every Buſhel. *Vide Ante*, (A. 2.)

By he *St.* 23 *H.* 8. 5. Commiſſioners of Sewers are allowed 4*s.* *per Diem*, and the Clerk 2*s.*

By the *St.* 23 *H.* 8. 6. Mayor, *&c.* for Recognizance ſhall take but 3*s.* 4*d.* The Clerk 3*s.* 4*d.* and for certifying it 20*d.* On Pain of 40*l.*

Fees for Grants of the King, *Vide* the *St.* 27 *H.* 8. 11.

For Inrolment of Deeds, *Vide* the *St.* 27 *H.* 8. 11.

By the *St.* 5 & 6 *Ed.* 6. 25. For the Recognizance of an Alehouſe-keeper ſhall be taken but 12*d.*

By the *St.* 1 & 2 *Ph.* & *M.* 12. Not above 4*d.* for impounding a Diſtreſs.

By the *St.* 5 *El.* 12. a Clerk of the Peace ſhall have 12*d.* for Licence of a Kidder, *&c.* 8*d.* for a Recognizance, and 4*d.* for the Regiſter.

## (E) What not.

IT is Extortion in a Collector of *Fifteenths* to take 18*d.* from a Town for an Acquittance. 3 *Inſt.* 149.

In a Coroner, to take beyond his Fee. *Vide Officer*, (G. 15.)

By the *St. M. Ch.* 9 *H.* 3. 26. Nothing ſhall be taken for Inquiſition of Life, or Member.

By the *St.* 52 *H.* 3. 11. Nothing ſhall be taken for *Beau-pleader*:—Nor, by the *St.* 17 *Car.* 2. 6. for *Damage-Cleer*.

By the *St.* 4 *Ed.* 3. 10. Sheriffs and Gaolers ſhall receive Felons without Fee.

By the *St.* 20 *Ed.* 3. 1. Juſtices of the Realm ſhall take no Fee, nor Robe, but of the King.

By the *St.* 5 *R.* 2. 16. The Clerk ſhall take but 2*s.* for making a Commiſſion or Record of *Niſi prius* in the *Exchequer*.

By the *St.* 2 *H.* 4. 8. a Chirographer, *&c.* ſhall not take more than 4*s.* for a Fine, on Pain of loſing his Office, ſuffering a Year's Impriſonment, and treble Damages.—Nor, by the *St.* 5 *H.* 4. 14. the 22*d.* for Inrolment. *Vide Ante*, (A. 2.)

By the *St.* 2 *H.* 4. 10. The Clerk of the Crown, tho' many Defendants, ſhall have but one 2*s.* for a *Venire facias*, or Plea, in Felony, or Treſpaſs. *Vide Ante*, (A. 2.)

By the *St.* 23 *H.* 6. 10. A Sheriff, *&c.* ſhall not for an Arreſt, Forbearance to arreſt, or Bail, take more than 20*d.* to the Sheriff, 4*d.* to the Bailiff, and 4*d.* to the Gaoler for an Arreſt; 4*d.* for a Return or Copy of the Panel; 4*d.* for Bail.

By the *St.* 21 *H.* 8. 5. The Ordinary, Official, *&c.* ſhall not take for Probate, Sealing, Regiſtring, Inventory making, or other Cauſe concerning a Will not above 5*l.* Value, ſo as the ſame be exhibited in Writing with Wax ready to be delivered, above 12*d.* nor above 3*s.* 6*d.* if above 5*l.* and under 40*l.* Value, nor above 5*s.* if it exceed 40*l.* Value; And nothing for an Adminiſtration if the Goods be under 5*l.* But 2*s.* 6*d.* if under 40*l.* and but 1*d.* for a Copy of a Sheet of 10 Lines, on Pain of 10*l.* and the Loſs of the Money taken. *Vide Adminiſtration*, (B. 8.)

By the *St.* 22 *H.* 8. 4. A Corporation for entring an Apprentice ſhall take but 2*s.* 6*d.* and when out of his Time but 3*s.* 4*d.* on Pain of 40*l.*

By the *St.* 29 *El.* 4. A Sheriff, Bailiff, *&c.* ſhall not take on an Execution more than 12*d.* in the Pound, if not above 100*l*: if above, but 6*d.* in the Pound, on Pain of treble Damages and 40*l.* a Moiety to the King, a Moiety to the Proſecutor: But this ſhall not extend to Fees on Execution in a Corporation.

By the *St.* 1 *Jac.* 10. Nothing ſhall be taken on a Reference by the Courts of *Weſtminſter*, on Pain of 100*l.*

It is Extortion in a Church-warden to take Money *colore Officii*. 1 *Sid.* 307.

# E Y R E.

## Allowance in Eyre.

*Vide Franchiſes,* (C.)

## Juſtices in Eyre.

*Vide Juſtices* (E. 1, &c.)

## Juſtices in Eyre of the Foreſt.

*Vide Chaſe,* (Q. 1.)—*Juſtices,* (F.)

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FACTOR.

# FACTOR.

*Vide Merchant*, (B.)

# FACULTY.

## Court of Faculties.

*Vide Courts*, (N. 5.)

# FAIR.

*Vide Market.*

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# FAIT.

## (A) What is essential to a Deed.

### (A. 1.) Writing.

A Deed is a Writing containing a Contract, and signed, sealed, and delivered by the Party. *Co. L.* 35. *b.*

And therefore, every Deed must be wrote on Parchment, or Paper. *Co. L.* 35. *b.* 2 *Rol.* 21. *l.* 40.

If it be wrote upon Cloth, Linnen, Leather, *&c.* it is not good. *Co. L.* 35. *b.* 229. *a.*

If a Blank be signed, and sealed, and afterwards written; it is no Deed. *Perk. S.* 118.

### (A. 2.) Sealing.

Seals were used *Temp. Reg. Edgar*, tho' they were not common in the Time of the *Saxons*. *Co. L.* 7. *a.* *Seld. Off. Chan.* 3. *Dub. Mad. Form. Int.* 27. *Vide Patent*, (C. 1, &c.)

And afterwards in the Time of *Edward* the Confessor, and *William* the Conqueror. *Co. L.* 7. *a.* For it seems, that being used by *Edward* the Confessor, after his Residence in *Normandy*, they were introduced into common Usage by *William* the Conqueror. *Mad. Form. Int.* 27.

The Seal is essential to the Deed. *Co. L.* 6. *a.* 7. *a.*

And therefore, regularly, it is not the Deed of him, who has not sealed it. 2 *Rol.* 23, *l.* 25.

And, *per Scriptum suum*, is not sufficient, without saying, that it *was sealed*, or, *was his Deed*. *Vide Pleader*, (2 W. 9, 14.)

But it is not material with what Seal it is ſealed; for the Seal of a Stranger is ſufficient. 2 *Rol.* 23. *l.* 35. *Perk. S.* 130, 132. 2 *Rol.* 22. *l.* 1.

And, if Twenty ſeal with the ſame Seal, it is the Deed of All. 2 *Rol.* 23. *l.* 30. *Perk. S.* 134.

And it need not be mentioned in the Deed, *Sigillum appoſui*. *R.* 2 *Co.* 5. *a.* 2 *Rol.* 21. *l.* 50. 22. *l.* 3.

And if a Corporation ſeals, there is no Need to ſay, *Sigillum noſtrum Commune*. 2 *Rol.* 21. *l.* 45.

Before the Conqueſt, and ſince, till the Time of *Rich.* 1. the King's Seal was not *Arms*, but any Impreſſion, varying at the King's Pleaſure. *Co. L.* 7. *a.* 2 *Rol.* 180. *A. Vide Patent*, (C. 1.)

*Rich.* 1. firſt uſed two Lions *Rampant*, *Combatant*. *Co. L.* 7. *a.* 2 *Rol.* 181. *l.* 25.

And after his Return from *Jeruſalem*, three Lions *Paſſant*. 2 *Rol.* 181. *l.* 25. but *Coke* ſays K. *John* firſt uſed them. *Co. L.* 7. *a.*

So, if an Indenture be between *A.* of the one Part, and *B.* and *C.* of the other; whereby *A.* demiſes to *B.* and *C.* who covenant with *A.* If *B.* ſeals the Counterpart, but *C.* does not ſeal, yet if *C.* agreed to the Leaſe, it ſhall be his Deed, and he ſhall be bound by the Covenants. *Co. L.* 231. *a.* *Vide Poſt*, (C. 2.)

So, if there are mutual Covenants between *A.* and *B.* of the one Part, and *C.* and *D.* of the other, and *B.* does not ſeal; yet Covenant lies by him, againſt *C.* and *D.* upon this Deed. *R.* 2 *Rol.* 22. *l.* 35. For he is named a Party to the Deed, and *C.* and *D.* covenant with him.

## (A. 3.) Delivery.

(A. 3.) What ſhall be a Delivery. *When a 2d Delivery avails, Vide Poſt*, (B. 5.)

So Delivery is eſſential to a Deed; for it is not a Deed without Delivery, tho' it be ſealed. *Co. L.* 35. *b.* 2 *Rol.* 23. *l.* 40, 45.

But a Delivery may be made without any Words: as, if he actually delivers a Writing, after ſealing it, to the Party, without ſaying any thing. *Co. L.* 36. *a.* 2 *Rol.* 24. *l.* 28, 45. *Per* 2 *J. Dal.* 104.

If he throws it upon the Table, with an Intent that the Party ſhall take it; and he takes it accordingly. *R. Ow.* 95.

If he delivers it as his Deed into the Hands of a Stranger. 2 *Rol.* 24. *l.* 42.

If it be wrote in a Book, and he delivers the Book. 2 *Rol.* 25. *l.* 20.

If a Deed be to *A.* for the Benefit of *B.* upon a Marriage, a Delivery to *B.* upon the Day of Marriage, ſaying, *This will ſerve*, and *B.* delivers it to *A.* ſhall be a good Delivery to *A.* *R. Dy.* 192. *b.* 2 *Rol.* 24. *l.* 15.

So a Delivery may be by Words only, without an actual Delivery: as, if the Writing lies upon the Table, and the Obligor ſays to the Obligee, *Take it up, it is ſufficient for you*. *Co. L.* 36. *a.*

Or, *take it as my Deed*. *Co. L.* 36. *a.*

So, if it be once delivered as his Deed, it is ſufficient, tho' he afterwards by Words explains his Intent otherwiſe: as, if an Obligation be made to *A.* and delivered to *A.* himſelf as an Eſcrow to be his Deed upon Performance of a Condition; this is an abſolute Delivery, and the ſubſequent Words are void, and repugnant. *Dub. Dy.* 34. *b.* *Cont. Cro. El.* 835. *R. acc. Cro. El.* 520, 884. *Mo.* 642. *Semb. cont. Mo.* 697. 27 *H.* 8. 12. *b.* *Acc.* 19 *H.* 8. 8. *a.* *R. acc. Hob.* 246. 2 *Rol.* 26. *l.* 45. *R.* 9 *Co.* 137. *Co. L.* 36. *a.* *R. Noy* 6.

If it be delivered as his Deed, to a Stranger, to be delivered to the Party upon Performance of a Condition, it ſhall be his Deed preſently; and if the Party obtains it, he may ſue before the Condition performed. 2 *Rol.* 25. *l.* 30. *R. per* 3 *J.* 1 *Leo.* 152.

So a Common Seal fixed to the Deed of a Corporation is *tantamount* to a Delivery. *R.* 2 *Rol.* 23. *l.* 50. *Dav.* 44. *b.*

So a Delivery by a Stranger, with the Aſſent of the Maker of the Deed, is ſufficient. *Perk. Fait* 137.

But if a Man throws a Writing on a Table, and ſays nothing, and the Party takes it; this does not amount to a Delivery, unleſs it be found to be put there with Intent to be delivered to the Party. *R.* 1 *Leo.* 140. *Ow.* 95. (A. 4.) What not.

So, if he delivers a Writing to *A.* to the Uſe of *B.*; it is not a Delivery to *B.* if it was not delivered as his Deed. 2 *Rol.* 24. *l.* 39.

So, if an Obligation made to two, be delivered but to one, without ſaying any thing, this will not avail as to the other. 2 *Rol.* 24. *l.* 12.

So, if a Leaſe and Letter of Attorny be fixed together, and a Delivery be of the Letter of Attorny only; this does not amount to a Delivery of the Leaſe, tho' it be actually put with the Letter of Attorny into the Hands of the Party. *R.* 2 *Rol.* 25. *l.* 5.

So, if it be delivered to a Stranger as an Eſcrow to be his Deed upon Performance of Conditions; it is not his Deed till the Conditions performed, tho' the Party happens to have it before. 2 *Rol.* 25. *l.* 25, 45. *Co. L.* 36. *a.*

Or be delivered to a Stranger to keep till Conditions be performed. 2 *Rol.* 25. *l.* 40.

Or, to be delivered to the Party, as his Deed, upon Performance of a Condition.

But a Delivery cannot be to the Obligee, as an Eſcrow. 2 *Cro.* 85, 6.

So a Deed, by a Corporation out of Poſſeſſion, containing a Leaſe of Land and a Letter of Attorny, is not good under the Common Seal, if the Attorny does not deliver it upon the Land. *R.* 2 *Rol.* 24. *l.* 5. *R.* 1 *Vent.* 257.

## (B) What is not eſſential.

### (B. 1.) The Name of the Party.

IT is not eſſential to a Deed, that the Party ſubſcribe his Name. 2 *Cro.* 640. *Vide Poſt,* (E. 3.)—

And therefore, a Variance in the Name ſubſcribed from the Name of the Defendant, does not prejudice, if it be found that the Defendant executed it: as, if the Defendant be *R. Erlin*, and ſubſcribed his Name *Erlwin*. *R. Sal.* 462. *Vide Capacity,* (B. 4, 5.)— *Grant,* (A. 2.)

### (B. 2.) Reading.

So it is not neceſſary that the Deed be read before Sealing and Delivery: for if the Party executes it without hearing, or deſiring that it may be read, yet it binds him. *Dub.* 44 *Ed.* 3. 23. *a.* 44 *Aſſ.* 30. 2 *Rol.* 28. *l.* 15. *Mo.* 184. 2 *Co.* 9. *b.*

But an illiterate Man need not execute a Deed before it be read to him. *R.* 2 *Co.* 3, *Manſer*. *R.* 2 *Co.* 9.

Or, if it be in *Latin*, *&c.* before it be read to him in a Language which he underſtands. 2 *Co.* 9.

So, a blind Man, tho' he be well learned. 11 *Co.* 28. *a.*

So, if it be agreed to execute a Releaſe of a Treſpaſs, and the Party, inſtead of it, executes a Releaſe of the Land; it does not bind him. 44 *Ed.* 3. 23. 44 *Aſſ.* 30.

Or,

Or, if he executes a general Releaſe. 2 *Rol.* 28. *l.* 10.

So, if an illiterate Man executes a Deed which is falſely read, or the Senſe declared different from the Truth, it does not bind him. *Adm.* 9 *H.* 6. 59. *b.* 2 *Rol.* 28. *l.* 5. *R.* 2 *Co.* 9. *b.* *Mo.* 148, 184.

As, if it be read to be upon a Condition, when it was abſolute. 2 *Rol.* 28. *l.* 25.

Or, to be of 5*l.* Penalty, when it was of 10*l.* 2 *Rol.* 28. *l.* 32. 11 *Co.* 27. *b.*

Or, to be a Gift in Tail, when it was a Feoffment. 2 *Rol.* 28. *l.* 27.

So it does not bind, if the falſe Reading be by a Stranger, any more than if by the Party to whom the Deed is given. *R.* 2 *Co.* 9. *b.*

So, tho' it be by a Friend of him, who executes it, without Covin. *R.* 2 *Co.* 9. *b.*

So, if a Man lettered, but blind by Age, &c. executes a Deed falſely read, it does not bind him. *R.* 2 *Rol.* 28. *l.* 20.

If a Feoffment, with Letter of Attorny, is falſely read; it is void for both. 2 *Rol.* 28. *l.* 27. 11 *Co.* 27. *b.*

But if two Deeds are on the ſame Parchment, and the one is truly read, and the other falſely; it binds for the Deed which was truly read. 2 *Rol.* 28. *l.* 35, 37. 11 *Co.* 27. *b.*

So, if there are two diſtinct Clauſes in the ſame Deed, and one is truly read, and the other not, it ſhall be good as to the one. 11 *Co.* 27. *b.*

## (B. 3.) Date.

So the Date is not eſſential to a Deed: for if it has no Date, or a falſe, or impoſſible Date, the Deed ſhall be good, and ſhall take Effect from the Time of the Delivery. *Co. L.* 6. *a.* *R.* 2 *Co.* 5. *a.* 2 *Rol.* 21. *l.* 41. *P.* & 3 *Leo.* 100. *Kelw.* 34. *b.* *R. Yel.* 193. *Vide Mad. Form. Int.* 30.

So, if it has the Day of the Month, but no Year is mentioned: for that is a void Date. 2 *Rol.* 27. *l.* 22.

So, if the Delivery be found before or after the Date, the Deed ſhall be good: for tho' the Party is eſtopped to plead the Deed to be delivered before the Date, yet the Jury may ſay the Truth. *R.* 2 *Co.* 4. *b.* 3 *Leo.* 100.

So, where a Deed has a void Date, it may be pleaded, that it was delivered at ſome other Day than that mentioned in the Deed. 2 *Rol.* 27. *l.* 25. *Yel.* 194.

So, if it be delivered after the Date, it may be pleaded, *Quod per fact' geren' dat'* 1°. *Maii & primo deliberat'* 9°. *Maii.* *R.* 3 *Lev.* 348. *R. Cro. El.* 890.

So a Deed with the Date of the Month, and Year of the King, ſhall be good, tho' *A. D.* be miſtaken. *Mod. Ca.* 45.

So, if the Year of the King be miſtaken. *R. Sal.* 462, 3.

So the Clauſe *in Cujus Rei teſtimonium* is not neceſſary. *Co. L.* 6. *R.* 1 *Leo.* 25.

## (B. 4.) Witneſſes.

So Witneſſes are not eſſential to a Deed.

Tho' the Clauſe of, *hiis Teſtibus*, continued in the Deeds of Subjects till the Tim of *H.* 8. 2 *Inſt.* 78.

And was uſed in the King's Patents *Temp. H.* 3. *Ed.* 1, 2, and 3, and before. 2 *Inſt.* 77. *Vide Patent*, (B.)

(B. 5.) When

## (B. 5.) When a ſecond Delivery renders a Deed effectual.

If a Deed be intirely void at the Time of Delivery, for Want of Capacity in him, who makes it, and afterwards the ſame Perſon attains a Capacity to make it, and then delivers the Deed *de novo*, the ſecond Delivery makes it good: as, if a *Feme Covert* delivers a Deed, and after the Death of her Huſband delivers it *de novo*. *Vide Capacity*, (D. 2.) *Vide Ante*, (A. 3.)

So, if a Deed be cancelled, and afterwards executed and delivered *de novo*, it ſhall be good. 2 *Rol.* 26. *l.* 7.

So, if a Man, who has a Capacity to make a Deed, but for ſome Impediment cannot at that Time make it effectual, delivers the Deed as an Eſcrow, to be afterwards delivered as his Deed, and after the Impediment removed, it be delivered as his Deed, it ſhall be good: as, if a Diſſeiſee makes a Leaſe for Years, being out of Poſſeſſion, and delivers the Deed as an Eſcrow, to be afterwards delivered as his Deed, and after Poſſeſſion obtained it be delivered as his Deed; it ſhall be good. *Co. L.* 48. *b.* *Cro. El.* 446. 3 *Co.* 35. *b.*

But if a Man delivers a Deed as his Deed, and at the Time of the Delivery has not Power to make it effectual, it ſhall not be good by a ſecond Delivery after the Impediment removed: as, if a Diſſeiſee makes a Leaſe, being out of Poſſeſſion, and delivers it as his Deed, it cannot be a good Leaſe by a new Delivery after the Poſſeſſion recovered.

So, if a Deed of Confirmation of the Eſtate of the Leſſee be delivered before a Leaſe executed; it cannot be good by a Delivery *de novo* after a Leaſe made.

So, if a Man, who has not Capacity to make a Deed, delivers it as an Eſcrow to be afterwards delivered as his Deed, and afterwards attains a Capacity, and then the Deed is delivered; it ſhall not be good, for this relates to the firſt Delivery: as, if an Infant, *Feme Covert*, &c. delivers a Deed as an Eſcrow, and after full Age, Death of the Huſband, &c. it is delivered as a Deed. *R. Cro. El.* 446. 3 *Co.* 35.

So, if it was delivered at firſt as his Deed, by one whoſe Deed is not void, but voidable only, as, by an Infant, by Dureſs, &c. it ſhall not be good by a Delivery *de novo* at full Age, when at large, &c. 2 *Rol.* 26. *l.* 10, 15.

## (C. 1.) Deed Indented.

EVERY Deed is Indented, or Poll.

When a Deed is indented it ſhall be ſaid to be an Indenture, tho' the Words, *This Indenture*, &c. are wanting. *Co. L.* 229. *a.* 2 *Inſt.* 672. *R.* 5 *Co.* 20. *b.*

But the Words, *This Indenture*, &c. do not make an Indenture, if the Deed be not indented. *Co. L.* 229. *a.* 143. *b.*

Indented Deeds began to be uſed *Temp. R.* 1. *John*, or *H.* 2. and were common *Temp. H.* 3. *Mad. Form. Int.* 29.

An Indenture may be indented at the Top or Side. *Co. L.* 229. *a.*

An Indenture is Bipartite, Tripartite, Quadrupartite, &c. *Co. L.* 229. *a.*

And every Part of the Indenture is of as great Effect as all the Parts together. *Lit. S.* 370.

And all the Parts are but one Deed in Law. *Lit. S.* 370.

## (C. 2.) Who are Parties to it.

*Vide Poſt*, (D. 2.)

If one Party executes his Part of an Indenture, it ſhall be his Deed, tho' the other does not execute his Part. *R. Cro. El.* 212. *Co. L.* 229. *a.*

So, if an Indenture be between *A.* and *B.* of the one Part, and *C.* and *D.* of the other, whereby an Eſtate is granted to *C.* and *D.* and there are Covenants to *A.* and *B.* by them; tho' *D.* does not ſeal, if he agrees to the Deed, he ſhall be bound by the Covenants. *Vide Ante*, (A. 2.)

So, tho' *B.* does not ſeal, *A.* and *B.* may have Covenant; for *B.* is named a Party. *Vide Ante*, (A. 2.)

So, if a Deed between *A.* on the Part of *B.* of the one Part, and *C.* of the other, and *C.* agrees to pay ſo much to *B.* without ſaying, with whom he agrees; *B.* tho' a Stranger, may maintain an Action thereon againſt *C.* *Dub.* 3 *Lev.* 139.

So, if a Deed does not mention any Parties in the Beginning, but ſays, *It is agreed, that a Horſe ſhall run, &c. In Witneſs whereof we have ſet our Hands and Seals*, and *A.* and *B.* ſign and ſeal it; they are Parties to it, and the one ſhall have Covenant againſt the other. *R.* 1 *Sal.* 214.

So, if a Deed be between *A.* and *B.* whereby it is agreed, that *D.* ſhall do all on his Part, and *D.* ſeals and delivers it, he is a Party; and if he does not do all agreed on, Covenant lies againſt the Covenantor. *Semb. Sho.* 59.

So, if a Demiſe be by *A.* to *B.* by Deed between *A.* and *B.* and afterwards *C.* adds, that he covenants that *B.* ſhall pay his Rent, *&c.* and ſigns the Deed; Covenant lies againſt *C.* tho' he was not a Party to the original Deed. *R. Carth.* 76.

But if a Charter-Party be between *A.* and other Owners of a Ship, of which *B.* is Maſter, of the one Part, and *C.* of the other, whereby *A.* covenants with *B.* and *C.* and alſo *C.* covenants with *A.* and *B.* Tho' *B.* executes the Deed, yet he is not a Party, and cannot releaſe Covenant by *A.* againſt *C.* *R.* 2 *Rol.* 22. *l.* 20.

So a Man cannot be Party to a Deed, if he be not named therein: as, if it be agreed between *A.* and *B.* that *A.* being arreſted ſhall go at large upon his Note, whereby he writes, *I engage to return to the Cuſtody of D. ſuch a Day*; *B.* is not a Party, nor can have Covenant upon this Note, tho' it be ſigned and ſealed by *A.* *R.* 1 *Sal.* 197.

## (D. 1.) Deed Poll.

A Deed Poll is every Deed not indented. *Co. L.* 229. *a.*

And if a Deed is pleaded, it ſhall be intended to be Poll, if it be not mentioned to be indented. *Co. L.* 229. *a.*

If a Deed Poll between *A.* and *B.* be delivered by *A.* to *B.* and afterwards delivered by *B.* to *A.* either of them who has it in his Hands may maintain an Action thereon: for the Re-Delivery does not avoid the Deed. *R. Cro. El.* 483.

So, if *A.* by Deed-Poll agrees to pay ſo much to *B.* he ſhall maintain an Action upon it, tho' he be a Stranger, and did not ſeal it. 3 *Lev.* 140.

## (D. 2.) Who ſhall take, tho' not a Party.

*Vide Ante*, (C. 2.)

None ſhall take a preſent Intereſt by a Deed, if he be not a Party to it. *Co. L.* 231. *a.*

So a Party to a Deed cannot covenant with one, who is a Stranger to the Deed. *Per Holt*, *Carth.* 76.

But a Man may take by way of Remainder, tho' he be not a Party to the Deed. *Co. L.* 231. *a.*

As, if by Deed between *A.* and *B.* only, *A.* conveys to *B.* for Life, or in Tail, Remainder to *D.* for Life, in Tail, or in Fee; *D.* ſhall take the Remainder, tho' he be a Stranger to the Deed. *Co. L.* 231. *a.*

So, if a Leaſe be to *B.* for Years if *A.* ſo long lives, and that it remain to *D.* for Years, to commence after the Death of *A.* It ſhall be a good Remainder to *D.* tho' no Party. *R. Ray.* 142.

## (E) The Parts of a Deed.

### (E. 1.) Recital.

A Deed may be good, tho' it has not formal Parts.

A Recital is not an eſſential Part of a Deed, for it may explain the Intent, or may be repugnant. *Per Holt*, 3 *Ca. Ch.* 101.

### (E. 2.) Indorſement, &c.

A Thing ſubſcribed after the Words, *In cujus rei Teſtimonium*, or indorſed, may amount to a Covenant or Defeazance; but is no Part of the Deed: As, if a Bill or Note for 10*l.* be ſubſcribed, *Memorandum that he is not to pay the* 10*l. till he has recovered, &c.* *R.* 2 *Brownl.* 98.

So a Thing wrote after, *In cujus Rei Teſtimonium* is no Part of the Deed, tho' it was wrote before the Sealing and Delivery of the Deed. 2 *Rol.* 23. *l.* 20. *R. Cont. Mo.* 3.

But if Words are wrote upon the Back for want of Room within the Parchment, they ſhall be Part of the Deed. 2 *Rol.* 22. *l.* 47.

So, if a Condition be indorſed upon an Obligation, &c. it ſhall be good; for it goes in Defeazance. 2 *Rol.* 22. *l.* 50.

So, if under the Condition Words are wrote, and that *they ſhall be Parcel of the Condition*; this makes the Words Part of the Condition. 2 *Rol.* 23. *l.* 15.

So, if there be a *Memorandum* wrote under, that *the Sum in the Condition ſhall not be paid till ſuch a Contingency*, without more. *R.* 2 *Rol.* 23. *l.* 5.

Or, a *Memorandum* indorſed. *R. Mo.* 679.

### (E. 3.) The Premiſſes.

The Office of the Premiſſes of a Deed is to aſcertain the Parties, and the Lands, &c. conveyed. *Co. L.* 6. *a.*

(E. 3.) When the Parties are well deſcribed.

The proper Deſcription of the Party is by his Chriſtian and Surname. *Vide Capacity*, (B. 4, 5.)—*Vide Ante*, (B. 1.)—*Grant*, (A. 2.)

So he may be deſcribed by his Name of Office, or Dignity.

So, if a Man executes a Deed, and his Addition be miſtaken, this ſhall not avoid the Deed: as, if *A. B. junior* executes an Obligation by the Name of *A. B. Senior*. *R.* 13 *H.* 4. 4. *b.* 2 *Rol.* 21. *l.* 15.

So, if his Surname be miſtaken: as *A. Boſom*, for, *A. Bozom.* 14 *H.* 4. 30. *b.* 2 *Rol.* 21. *l.* 19.

Or, if it be totally different: for a Man may have two Surnames. 3 *H.* 6. 25. *b.*

So,

So, if a Deed be executed by *A.* and ſubſcribed by his Chriſtian and Surname, but in the ingroſſing his Chriſtian Name is left blank, yet it ſhall be good. *R.* 2 *Cro.* 261.

So, if a Man be baptized by one Name and known by another, a Grant by the Name, by which he is known, ſhall be good. 2 *Rol.* 43. *B.*

So, if *Jane B.* makes a Leaſe by the Name of *Joan*, it ſhall be good. *R.* 2 *Rol.* 42. *l.* 50.

But if *Edmund* executes a Deed in which he is named *Edward*, and he be ſued by the Name of *Edmund alias dict' Edward, &c.* he may plead *Non eſt Factum*, and ſhall avoid the Deed. *R.* 3 *H.* 6. 25. *Per Priſot*, 34 *H.* 6. 19. *b.* 2 *Rol.* 21. *l.* 21. *R. Dy.* 279. *b.* *Ow.* 48. *R. Cro. El.* 897. *R.* 2 *Cro.* 558, 640.

Tho' he ſubſcribes by his true Name, *Edmund.* *R.* 2 *Cro.* 640.

Tho' the Jury find, that *Edmund* executed the Deed. *R.* 2 *Cro.* 640.

So, if he be ſued by the Name of *Edward*, when his Name was *Edmund*; for he may plead *Non eſt Factum*, tho' in Fact he executed the Deed. *Cont. Dy.* 279. *b.* but that is denied *ibidem in Marg.*

So, if a Man takes ſolely by the Deed, a Miſtake of the Title, or Addition to the Party, ſhall avoid the Deed: as, if a Grant be to *A. B. Knight*, where he is not a Knight. 2 *Rol.* 43. *l.* 30.

Or, to *A. B. Eſquire*, where he was a Knight. *R. per* 3 *J. Rookby cont. Sal.* 561.

Yet if *Edmund* executes a Deed in which he is named *Edward*, and is ſued by the Name of *Edward*, and pleads Miſnomer; he may be eſtopped by the Deed. *Per* 2 *J. Dy.* 279. *b. in Marg.*

(E. 4.) When the Lands are well deſcribed. By what Names they paſs. *Vide Grant*, (E. 1, &c.)

The Premiſſes ought to comprehend the Certainty of the Lands or Tenements to be conveyed. *Co. L.* 6. *a.*

*Land* is *Nomen Generaliſſimum*, and comprehends all the Species of Land. *Co. L.* 4. *a.* *Vide Grant*, (E. 3.)

If a Man poſſeſſed of a Term for Years, by Indenture, reciting the Term, grants all the ſaid Lands to *A.* his Executors and Aſſigns; the whole Term paſſes, without more. *R. Skin.* 542.

If the Deſcription of the Tenements granted comprehends ſeveral Particulars and Circumſtances in the ſame Sentence, All ought to be true, otherwiſe the Grant will be void: as, if a Man conveys all his Tenements *in the Pariſh of B. in the Tenure of A.* if they are not in the Pariſh of *B.* tho' they are in the Tenure of *A.* they do not paſs. *R.* 3 *Co.* 10. *a*, *Doughty.* *R. Dy.* 292. *b.*

So, if he conveys all his Tenements *in the Tenure of A. in the Pariſh of B:* for it is not material that the firſt Part of the Deſcription is true, if the Whole is not ſo. *R.* 2 *Co.* 33. *a.* *D. cont.* 3 *Co.* 10. *a.* *Acc. Hob.* 171.

So, *a fortiori*, if he conveys *omnia illa Meſſuagia, Terras, Tenementa in Tenura A. B. &c. in W.* when they are in *D.* for, *illa*, refers to the whole Period. *R.* 2 *Co.* 33. *a.*

*Totam illam Portionem Decimarum in L. cum omnibus Decimis in L. in Tenura J. C.* when he has not any Portion, and the other Tithes in *L.* were not in the Tenure of *J. C.* *R.* 4 *Co.* 35.

If he conveys the Manor of *D.* in the County of *B.* by Bargain and Sale, when it lies in the County of *O.* *R. Dy.* 292. *b. in Marg.*

But if the Thing deſcribed is ſufficiently aſcertained, it is ſufficient, tho' all the Particulars are not true: as, if a Man conveys his Houſe in *D. which was R. Cotton's*, when it was *Tho. Cotton's.* *Hob.* 171.

Or, his Houſe *late R. Cotton's in D.* *R. Dy.* 376. *b.*

If he demiſes the Manor of *D. which Manor is in Leaſe for ſuch a Rent*; the Demiſe is good, tho' the Rent be miſtaken. *Per Poph.* 2 *Cro.* 34.

Or, a Meadow in the Pariſh of *D. in Com' B.* tho' it was in *Com' W.* *R. Dy.* 292. *b.*

Or, the Manor of *D. in Com. B.* when it was *in Com. O.* if Livery be made. *Dy.* 292. *b. in Marg.*

Or the Commandry of *S. in Com. R.* tho' it be not *in Com. R.* *Cro. El.* 114.

So, if he demiſes the Tithes of 78 Acres, and all Tithes prædial and perſonal belonging to the Prior, *&c. All which were in Leaſe to M.* The Tithes paſs, tho' not in Leaſe: for there was a ſufficient Certainty before, and therefore the Words, *All which, &c.* ſhall be taken as an Explanation, not as a Reſtriction. *R. Cro. Car.* 584.

If he demiſes his Meadows in *B.* and *D. containing* 10 *Acres*, where they contain 20 Acres; all the Meadows paſs. *Semb. Sav.* 114.

## (E. 5.) Exception.

(E. 5.) By what Words.

If a Man makes a Grant he may make an Exception out of the Generality of the Grant, by the Words, *exceptis, ſalvo, præter, &c.* *Co. L.* 47. *a.*

So, by the Word, *reſerving*; which has the Force of an Exception, or Saving, ſometimes. *Co. L.* 143. *a.*

So an Exception may be added, after a Limitation of an Uſe. *R. Cro. Car.* 437. *Jon.* 376.

(E. 6.) The Effect of an Exception.

*Si quis Rem dat & Partem retinet, illa Pars, quam retinet, ſemper cum eo eſt, & ſemper fuit.* *Co. L.* 47. *a.*

And therefore, if *A.* leaſes a Tenement reſerving a Houſe *pro proprio uſu & occupatione*; the Houſe is wholly in the Leſſor, and not demiſed. 4 *Mod.* 11.

So, if the Exception be, *for the Uſe of the Leſſor when he pleaſes to reſide there, and at other Times for the Uſe of the Leſſee*; the Houſe is wholly excepted out of the Demiſe, tho' the latter Words make the Leſſee Tenant at Will. *R.* 4 *Mod.* 12. *Sho.* 311.

If a Man lets his Manor, *exceptis Boſcis*, the Soil ſhall be excepted. *Dub. Dy.* 19. *a.* *R.* 5 *Co.* 11. *Cro. El.* 522. 2 *Rol.* 455. *l.* 15.

So, if it be, *except Woods, Underwoods, Coppices, &c. ſtanding and growing upon the Manor, with Liberty of Ingreſs, ſaving for the Botes of the Leſſee*, who covenants to make Fences, except to new Coppices: for upon the whole Leaſe it appears, that the Intent was to except the Soil. *R.* 2 *Rol.* 455. *l.* 20. 2 *Cro.* 487. *Vide Poſt*, (E. 7.)

(E. 7.) When it ſhall be void.

But an Exception of a Thing not *in Eſſe*, or not contained in the Demiſe, is void. *Co. L.* 47. *a.* 143. *a.*

As, if a Leſſee for Years aſſigns his whole Term, *except the Trees, Mines, &c.* it will be a void Exception; for they were not in his Power. 5 *Co.* 12. *b.* *Cro. El.* 522. *R.* 2 *Rol.* 454. *l. ult.*

But if a Leſſee for Life, or Years, makes an Under-leaſe, *except the Trees*, it will be a good Exception: for he may have Treſpaſs for cutting them down, and is ſubject to Waſt if they are cut down. *R.* 2 *Rol.* 454. *l.* 42, 45.

So an Exception of a Thing certain, out of a Thing particular and certain, will be void: as, if a Man leaſes 20 Acres, *excepting one Acre*, the Exception is void. *Co. L.* 47. *a.*

So, if he grants a Piſchary, ſaving *Piſchariâ ſuâ.* 2 *Rol.* 454. *l.* 2.

So, if he leaſes an Houſe and Shops, *except the Shops.* 2 *Rol.* 454. *l.* 27. *Dy.* 264. *b.*

If he leaſes a Parſonage with all Lands, Underwoods, *&c. except great Trees, Wood, and Timber*; it ſhall be void as to the Underwood. *R.* 2 *Rol.* 454. *l.* 25. *Hob.* 170.

If he grants the Manor of *B.* with all Lands reputed Parcel thereof, and occupied therewith, *except the Manor of C.* if *White-acre* be reputed Parcel of *B.* and occupied with it, tho' in Truth it be Parcel of the Manor of *C.* it ſhall not be excepted: for it was expreſly granted before. *R.* 2 *Rol.* 454. *l.* 30.

If he grants his Manor, *except the Demeſnes, or Services. Hob.* 170.

Or, except Wards, Marriages, Reliefs, and Courts, in a Grant by a Subject. *R.* 2 *Cro.* 176.

So, if a Man grants *totum Statum & Intereſſe ſuum*, except the Moiety; it ſhall be void. 2 *Rol.* 455. *l.* 1.

Or aſſigns his whole Term, except to himſelf for his Life; for it is repugnant. 2 *Rol.* 455. *l.* 5.

So an Exception of the Whole contained in the Grant, *&c.* ſhall be void: as, if *A.* releaſes all his Right to ſuch Land, *except that which he has by Deſcent*, when he has the Whole by Deſcent; the Exception is contradictory, and void. *R.* 2 *Rol.* 454. *l.* 5.

So, if he demiſes all his Land in *B. except White-acre*, when he has nothing but *White-acre. R.* 2 *Rol.* 454. *l.* 20. *Hob.* 170.

Or, all his Houſe, *except ſuch a Chamber*, when he has nothing but the Chamber. *Semb.* 2 *Rol.* 454. *l.* 10.

Or, all his Land in *A. præter his Manor of B.* and he has nothing in *A.* but that Manor. 2 *Rol.* 454. *l.* 40. *Hob.* 170.

So an Exception out of an Exception leaves the Thing unexcepted.

So Words added to an Exception may qualify the Force of the Words, and explain the Intent of the Exception: as, if a Man leaſes Land, *except his Wood, viz. Oak, Aſh, and Crabtrees, &c.* the Soil is not excepted. *Semb.* 2 *Rol.* 455. *l.* 10.

(E. 8.) How it ſhall be conſtrued.

Every Exception is the Act and Words of the Leſſor, Grantor, *&c.* and therefore ſhall be taken *ſtrictè* againſt him. 10 *Co.* 106. *b.*

## (E. 9.) The *Habendum*.

The Office of the *Habendum* is to name the Grantee, and limit the Certainty of the Eſtate. *Co. L.* 6. *a.* 2 *Rol.* 65. *l.* 25. 9 *Co.* 47. *b.*

As, if a Man grants Land to *A. habendum eidem A. & Hæredibus ſuis*, or, *Hæredibus de Corpore ſuo*, or, *pro Termino Vitæ, vel Annorum.*

And if a Limitation be to *A. habendum* to the Uſe of him and the Heirs of his Body, it will be a good Eſtate Tail; for it does not operate by Way of Uſe, but as a Limitation at Common Law. *R. Cro. Car.* 231, 245.

So the *Habendum* may abridge or alter the Generality of the Premiſſes. *Hob.* 171.

As, if a Reverſioner after 3 Lives grants his Eſtate to *A.* for Life, *habendum* for Life when the 3 Lives expire; it will be a good Grant of the Reverſion for Life. *Hob.* 171.

So, if a Grant be to two, *habendum* to the one for Life, and after his Death to the other in Fee; the one ſhall take for Life, Remainder to the other. *R.* 8 *Ed.* 3. 59. *b.* 2 *Co.* 55. *b. Pl. Com.* 153. *cont. but* 160. *accord. Acc. Hob.* 172. *Dy.* 126. *b.*

If a Grant be to two jointly, the *Habendum* may limit a Moiety to the one, and a Moiety to the other; by which they ſhall be Tenants in Common. *Co. L.* 183. *b. Cont. Pl. Com.* 153. *but. acc.* 160. *a. Vide Eſtates*, (K. 2.)

So a Grant may be to three, *habendum* to one for Life, Remainder to another for Life, Remainder to the third for Life, *ſucceſſivè*. 2 *Rol.* 65. *l.* 50. *R. Dy.* 160. *b.* *Per* 2 *J. Mo.* 26. *R. Dy.* 361.

So a Grant to *A. habendum* to him and his Wife for their Lives *ſucceſſivè*, will be a good Remainder to the Wife. *R.* 2 *Cro.* 372. *R.* 2 *Cro.* 564.

So, if a Grant, or Feoffment be to *A.* and his Wife and their Heirs, *habendum* to them and the Heirs of their Bodies, without more: They have an Eſtate Tail, with a Remainder expectant in Fee. *R.* 2 *Rol.* 19, 23. But ſaid, that it ſhall be only an Eſtate Tail, without a Remainder in Fee expectant; for the *Habendum* abridges the Generality of the Premiſſes. *Co. L.* 21. *a.* 8 *Co.* 154. *b.*

So a Grant of Rent to *A.* and his Heirs, *habendum* to him and his Heirs, to the Uſe of him and his Heirs for the Life of *B.* he ſhall have only a diſcendible Freehold. *R. Mo.* 876.

So, where no Eſtate is expreſſed in the Premiſſes, the *Habendum* may fruſtrate and make it void; as, if a Feoffment be to *A. habendum*, after the Death of the Grantor, for Life; the *Habendum* makes the Feoffment void: for a Freehold cannot commence *in futuro*. 2 *Rol.* 66. *l.* 5. *Hob.* 171. *Skin.* 544.

(E. 10.) Shall not be repugnant.

But if the *Habendum* be repugnant to the Premiſſes, it ſhall be void: as, if a Grant be of all his Term, *habendum* after his Death; the *Habendum* will be void. *Hob.* 171. *R. Dy.* 272. *a.*

Or, of all his Lands, to the Grantee, his Executors and Adminiſtrators; for this paſſes the Term. *R.* 1 *Sal.* 346. *Skin.* 542.

If a Grant be by the Premiſſes to *A.* and his Heirs, *habendum* after his Death to *A.* and the Heirs of his Body; *A.* ſhall take immediately; for a Freehold *in futuro* cannot be; and therefore the *Habendum*, being repugnant to the Premiſſes, ſhall be void. *R.* 3 *Lev.* 339.

So the *Habendum* cannot enlarge the Premiſſes: and therefore, if *A.* leaſes Land to *B.* for Years, *habendum* to *B.* and *C.* for Life; Nothing paſſes to *C.* nor ſhall *B.* have an Eſtate but for his own Life. *Jon.* 310.

## (F) When a Deed ſhall be avoided.

### (F. 1.) By Razure, Interlineation, &c.

BUT if a Deed after Execution be altered in a material Place by Razure, Interlineation, Addition, &c. by the Obligee himſelf, it ſhall be void, and the Obligor may plead *Non eſt Factum*. *R.* 11 *Co.* 27, *Pigot.*

As, if it be altered in the Name of the Obligor, or Obligee, or Sum, &c. 11 *Co.* 27. *a.*

Or, by the Addition of a Chriſtian Name, or Addition of the Obligor. *R. Cro. El.* 626.

Or, by the Addition of a Condition for the Advantage of the Obligor. *R. Cro. El.* 626.

So, if he makes a Leaſe agreeable to the Counterpart, by Increaſe of the Rent. *R. Cro. El.* 627.

So, if he eraſes Part of the Land demiſed. *R. Mo.* 35.

So, if a Word be daſhed thro' with a Pen, tho' it be legible. 11 *Co.* 27. *a.*

So a Deed ſhall be void, if it be altered in a material Place by a Stranger, without the Privity of the Obligee. *R.* 11 *Co.* 27. *a.* but this ſeems, *per*

2 *J.*

a J. understood to be, in a Place so material that it cannot be sued. 1 *Rol.* 40. *R. Cro. El.* 626. *Mo.* 10.

Tho' it be before the Obligee had Notice of the Execution of the Deed. *R. Cro. El.* 627.

So, if it be altered by the Obligee himself, tho' it be in a Place not material. 11 *Co.* 27. *a.*

As, by the Addition of a Date. *Cro. El.* 800.

So, by Razure, *&c.* the whole Deed shall be void. 11 *Co.* 28. *b.*

Tho' it contains several distinct Covenants, or Clauses; and the Razure be only in One. 11 *Co.* 28. *b.*

But if the Alteration be by the Obligor himself, in a Place not material, the Deed shall not be void: as, if it be an Addition to the Name of the Obligee. 11 *Co.* 27. *a.*

So an Alteration by a Stranger, in a Place not material, without the Privity of the Obligee, does not avoid the Deed. *R.* 11 *Co.* 27. *a.* 1 *Rol.* 40.

Or, if it does not appear, by the Pleadings, to be material. 1 *Rol.* 40.

Nor an Alteration by the Executor of the Obligee, in a Place not material, and which tends to the Benefit of the Obligor. *R.* 1 *Leo.* 282.

So an Alteration by the Obligor himself, in a material Place, does not avoid the Deed. 11 *Co.* 27.

So, if a material Alteration be by Consent of the Obligor and Obligee, it does not avoid the Deed: as, if the Name of another Obligor be interlined, and he executes the Deed. *R.* 2 *Lev.* 35.

Or, upon an Agreement between them that an Addition shall be made after the Deed sealed. *Per Popb. Cro. El.* 627.

### (F. 2.) By breaking off the Seal.

So, if the Seal of any Deed be broken off, the Deed shall be void.

So, tho' it be broken off by a Stranger. 5 *Co.* 23. *a.* 1 *Rol.* 40.

Or destroyed by Mice, before Plea. 1 *Rol.* 40.

So, if *A.* and *B.* by Deed covenant jointly with divers Persons, and the Seal of one be broken off, the whole Deed shall be void. 5 *Co.* 23. *a.*

So, if bound in an Obligation jointly and severally, and the Seal of One be broken off. *R.* 2 *Lev.* 220.

But where *A. B.* and *C.* covenant severally with divers Persons, who join in a Covenant to them, and the Seal of *A.* is broken off; the Deed shall be void only as to him, for it is *quasi* a several Deed as to them. *R.* 5 *Co.* 23. *a.*

So, if the Seal be broken off by Mice, after *Non est Factum* pleaded, it shall not be void. 1 *Rol.* 40.

## (G) When a Deed takes Effect.

A Deed is not in Force, tho' it be signed and sealed, till Delivery.

And therefore, if a Condition be that he shall pay for Corn *tunc*, or *postea* delivered, it does not bind him to pay for Corn delivered after the Date, and before the Delivery of the Deed. *R.* 2 *Cro.* 264.

## Deeds, When Evidence.

*Vide Chancery*, (T. 7.)—*Evidence*, (B. 1, &c.)

## Dyer of Deeds.

*Vide Pleader*, (P. 1.)

## Shewing of Deeds.

*Vide Pleader*, (O. 1, &c.)

*Vide* alſo *Chancery*, (3 I. 1, &c.)—*Franchiſes*, (F. 13.)—*Surrender*, (B.—C.)

# FALSE AFFIRMATION, AND WARRANTY.

*Vide Action upon the Caſe for a Deceipt*, (A. 8, 9, 10, 11.—E. 4.)

# FALSE IMPRISONMENT.

*Vide Impriſonment*, (L. 1, &c.)—*Pleader*, (3 M. 22.)

# FALSE JUDGMENT.

*Vide Pleader*, (3 D.)

# FALSE LATIN.

*Vide Abatement*, (H. 2.)—*Amendment*, (D. 2.)—*Obligation*, (B. 3, 5.)

# FALSE RETURN OF MEMBERS OF PARLIAMENT.

*Vide Parliament*, (D. 15.)

# FALSE SUGGESTION.

*Vide Grant*, (G. 9.)—*Patent*, (F. 2.)

# FALSIFYING A RECOVERY.

*Vide Recovery*, (B. 6, &c.)

# FEALTY.

*Vide Copyhold*, (K. 9.)—*Homage*, (D.)

# FEE-FARM.

*Vide Rent*, (C. 3.)

# F E E S.

*Vide Extortion.*—*Officer*, (G. 15.—H.)—*Viſcount*, (F. 1, 2.)

# F E E S I M P L E.

*Vide Copyhold*, (C. 7.)—*Deviſe*, (N. 4.)—*Eſtates*, (A. 1, &c.)—*Officer*, (B. 7.)

# F E E T A I L.

*Vide Copyhold*, (C. 8, 9.)—*Deviſe*, (N. 5, 6.)—*Eſtates*, (B. 1, &c.—C. 1, &c.)—*Officer*, (B. 8.)

# F E L O D E S E.

*Vide Juſtices of Peace*, (M. 3.)

# F E L O N Y.

*Vide Action upon the Caſe*, (B. 5.)—*Action upon the Caſe for Defamation*, (D. 3, 4.)—*Admiralty*, (E. 4, &c.)—*Forfeiture*, (B. 3.)—*Juſtices*, (M. 1, &c.—N. 2.—O. 1, &c.—P. 1, &c.—S. 1, &c.—Z.)—*Juſtices of Peace*, (B. 3.)—*Leet*, (L. 1.)—*Pleader*, (2 S. 18.)—*Teſtmoigne*, (A. 3.)—*Utlagary*, (D. 1.)—*Waife*, (C.)

# F E M E.

*Vide Officer*, (B. 2.)

## Feme Covert.

*Vide Adminiſtration*, (D.)—*Bankrupt*, (D. 7, 11.)—*Baron and Feme, per Totum.*—*Capacity*, (D. 2.)—*Chancery*, (2 M. 1, &c.—3 Z. 1, &c.)—*Deviſe*, (H. 3.)—*Diſcent*, (D. 8.)—*Dower, per Totum.*—*Fine*, (K. 3, 4.)

## Feme Sole.

*Vide Baron and Feme*, (A. 1, &c.)

## Feme Sole Merchant.

*Vide Baron and Feme*, (A. 2.)—*London*, (N. 7.)

# FEOFFMENT.

## (A) A Feoffment.

### (A. 1.) Of what Effect it ſhall be.

A Feoffment is a Conveyance of Lands and Tenements in Poſſeſſion, by One to Another in Fee. *Co. L.* 9. *a.* 2 *Rol.* 1. *A.*

And it is the moſt antient and moſt beneficial Conveyance.

If the Feoffor was out of Poſſeſſion, by the Feoffment and Livery thereon the Eſtate is brought back, and the Feoffee has the Freehold perfectly, tho' he could not have had it by Fine, Recovery, Bargain and Sale, or other Conveyance. *Co. L.* 48. *b.* 49. *a.*

Who may make a Feoffment, or take thereby, *Vide* in *Capacity*.

### (A. 2.) Of what Things.

A Feoffment may be made of all Corporeal Eſtates: as, of Houſes, Lands, Tenements, *&c.* *Co. L.* 49. *a.*

So a Feoffment may be made of Lands, in which a Man has no fixed Eſtate; as, if he has 12 Acres to be annually aſſigned in ſuch a Meadow: and Livery in any Acre, which he has at the Time of the Feoffment, is ſufficient. *Co. L.* 4. *a.* 48. *b.* 2 *Rol.* 10. *l.* 40 *ad* 50.

So, if a Feoffment be of 50 Acres towards the North in ſuch a Moor, which contains 100 Acres, Livery in any of them is ſufficient. 2 *Rol.* 11. *l.* 5. *Dy.* 372. *b.*

So, if two Manors be divided *alternis Vicibus* between Parceners, either may make a Feoffment of her Manor; and the Deed ought to comprehend both, and ſhe ſhall make Livery in One *ſecundum Formam Chartæ* this Year, and in the other the next Year. *Co. L.* 48. *b.*

But a Feoffment cannot be made of a Thing of which Livery cannot be given: as, of Incorporeal Inheritances, Rent, Advowſon, Common, *&c.* 2 *Rol.* 1. *l.* 20.

Tho' it be an Advowſon, *&c.* in Groſs. *Cont.* 11 *H.* 6. 4. *Acc.* 2 *Rol.* 1. *l.* 21.

So a Feoffment of Lands, which are uncertain till a future Act, is void; for Livery does not operate *in futuro:* as, if *A.* agrees by Indenture to convey 20*l.* *per Annum* in Land to ſuch an Uſe, and 20*s.* *per Annum* to ſuch an Uſe, and makes a Feoffment of all his Lands to the Uſes in the Indenture; it will be void for all but that where Livery was made, it not being aſcertained, which ſhall be to one Uſe, and which to the other. *R.* 1 *Rol.* 187.

### (A. 3.) By what Words.

No preciſe Words are requiſite to a Feoffment: and therefore a Conveyance by other Words, as well as by the Word, *enfeoff*, amounts to a Feoffment. 2 *Rol.* 73.

So, *Dedi & Conceſſi.* 2 *Rol.* 73.

So, if a Man by Deed *bargains and ſells* Land to *A.* and his Heirs, and Livery be made, it ſhall be a Feoffment. *R.* 1 *Leo.* 25.

So,

So, if a Man ſays, *All my Lands belonging to the Monaſtery of A. I give to B.* Livery being made, his Manor belonging to the Monaſtery of *A.* paſſes. *Semb. Sav.* 104.

So, if the Condition of an Obligation, *&c.* be to make a Feoffment to *A.* and he makes a Leaſe and Releaſe, it is ſufficient; for it is *tantamount. Co. L.* 207. *a.*

So, if the Words are ſufficient for a Feoffment or other Conveyance, the Vendee may take by which Conveyance he pleaſes: as, if a Leſſor by Deed *dedit & conceſſit* to the Leſſee for Years, with a Letter of Attorny to make Livery, and delivers the Deed to the Leſſee, and afterwards Livery is made; the Leſſee may take it as a Feoffment, or a Confirmation. *R.* 2 *Leo.* 192.

## (B) Livery of Seiſin.

### (B. 1.) When it ſhall be good.

(B. 1.) Livery in Fact. *Vide Poſt,* (B. 8.)

TO every Feoffment, or Paſſing of Freehold by a Conveyance at Common Law, Livery of Seiſin is requiſite. *Co. L.* 48. *a.*

Livery may be in Fact, or in Law. *Co. L.* 48. *a.*

Livery, in Fact is, when a Man delivers the Ring of the Door, a Turf, or Twig to the Feoffee upon the Land, *in the Name of Seiſin. Co. L.* 48. *a.*

Or delivers the Deed of Feoffment upon the Land, *in the Name of Seiſin. Co. L.* 48. *a.*

Or delivers any Thing which does not relate to the Land, upon the Land, *in the Name of Seiſin. Co. L.* 48. *a.*

So, if he being in the Houſe, or at the Door, ſays to the Feoffee, *I deliver you Seiſin, or Poſſeſſion, of this Houſe, in the Name of all the Lands in this Deed, according to the Effect of this Deed,* without other Act, or Ceremony. *Co. L.* 48. *a.*

Or, *Enter into this Houſe, or Land, and have, or enjoy it, according to the Deed. Co. L.* 48. *a.*

Or, *Enter, &c. and God give you Joy. Co. L.* 48. *a.*

Or, *I am content you enjoy this Land according to the Deed. Co. L.* 48. *a.*

*Stand forth, I here give thee this Land.* 2 *Rol.* 7. *l.* 30. *Poph.* 47.

Or if, being ſick in the Houſe, he makes a Feoffment to *A.* and ſays, *I conſent you take Livery preſently,* and orders his Servants to take him for their Maſter. 2 *Rol.* 7. *l.* 25.

So, if he ſays any Words to the ſame Import. *Co. L.* 48. *a.*

If the Land lies in ſeveral Counties, he ought to make Livery in each County. *Lit. S.* 61.

But Livery in Part, in the Name of the Whole, is ſufficient for all in the ſame County. *Lit. S.* 61.

So, if an Heir enters into Part of the Land deſcended, and makes Livery therein in the Name of the Whole, it is ſufficient for all the Lands which deſcended. 2 *Rol.* 5. *l.* 36.

If a Man leaſes to *A.* for Years, Remainder to *B.* in Fee, in Tail, or for Life, he muſt make Livery to *A. Lit. S.* 60. *Mo.* 14.

And if a Leaſe be to *A.* and *B.* Livery to one of the Leſſees is ſufficient. *Co. L.* 49. *b.*

(B. 2.) *Secundum Formam Chartæ.* If Livery be made *Secundum Formam Chartæ,* this implies the effectual Quantity and Quality of the Eſtate contained in the Deed. *Co. L.* 48. *a.*

And therefore, if he delivers Seiſin of one Parcel *Secundum Formam Chartæ*, tho' he does not ſay *in the Name of the Whole*, All in the Deed paſſes. *Co. L.* 48. *a.*

Or, to one Feoffee, the Eſtate paſſes to all the Feoffees named in the Deed. *Co. L.* 48. *a.*

So, if he makes Livery *Secundum Formam Chartæ*, it operates according to the Effect of the Deed, tho' there be a Miſtake of a Name, *&c.* in the Deed. *R.* 2 *Rol.* 2. *l.* 6.

So, if the Party adds Words contrary to the Intent of the Deed, they ſhall be rejected: as, if the Deed conveys in Fee, and Livery is made for Life *Secundum Formam Chartæ*, the Fee paſſes. *Co. L.* 48. *a.*

(B. 3.) Livery by Attorny. *Vide Poſt*, (B. 8.)

Livery ought to be made by the Feoffor, and taken by the Feoffee, in Perſon, or by Attorny lawfully conſtituted.

If an Attorny be appointed to make, or take Livery, it ought to be by Warrant of Attorny in Writing.

And either Party may make one or more to be his Attorny, to give, or take Livery for him. 2 *Rol.* 8. *l.* 25.

A Man attainted, outlawed, excommunicated, profeſſed, a Villein, an Alien, an Infant, or *Feme Covert* may be an Attorny to make, or take Livery. *Co. L.* 52. *a.*

So a Huſband may be Attorny for his Wife, or a Wife for her Huſband. *Co. L.* 52. *a.*

So, He in Remainder for the Leſſee for Life. *Co. L.* 52. *a.*

Leſſee for Years for him in Reverſion, or Remainder. *Co. L.* 52. *a.*

And if a Leſſee for Years makes Livery for his Leſſor, his Term is not merged. *Co. L.* 52. *a.* *R.* 1 *Leo.* 192.

So, if a Reverſioner makes Livery for the Leſſee for Life, he may enter for the Forfeiture. *Co. L.* 52. *a.*

Otherwiſe, if a Reverſioner makes Livery for a Leſſee for Years; for his Livery cannot be for the Leſſee, who has no Freehold. *Co. L.* 52. *a.*

If an Attorny makes Livery of an Acre in the Name of All, it is ſufficient for the Whole, tho' his Warrant was to make Livery of All. 2 *Rol.* 8. *l.* 17, 43.

So, if he makes Livery in one *Secundum Formam Chartæ*, which compreends the Whole. *Co. L.* 52. *a.*

Or, makes Livery to One *Secundum Formam Chartæ*, when the Feoffment was to ſeveral Perſons. *Co. L.* 52. *a.*

Tho' his Warrant was expreſs to enter into All, and to make Livery of or to All. *Co. L.* 52. *a.*

If a Warrant be to three *conjunctim & diviſim* to make Livery in all and ſingular the Lands, *&c.* each ſeverally may make Livery of Part of the Lands. *R.* 1 *Leo.* 192. 1 *And.* 246. 4 *Leo.* 196.

If the Warrant be, that he ſhall enter into any Part in the Name of the Whole, he may make Livery of Lands in the Poſſeſſion of ſeveral Tenants, ſeverally. *R. Hard.* 314.

So, if Livery be made after three Rent-Days incurred, it ſhall be good, if it is not confined to any Time. *R. Mo.* 875.

But he ought ſtrictly to purſue the Effect of his Warrant: and therefore, if the Feoffor was diſſeiſed, and gives a Warrant to enter into All the Parcels, and make Livery of them; if he enters only into One, and makes Livery *Secundum Formam Chartæ*, it ſhall be void: for, without Entry into All, the Eſtate ſhall not be reveſted for ſo much into which he did not enter. *Co. L.* 52. *a.* 2 *Rol.* 9. *l.* 15.

So, if a Letter of Attorny recites a Feoffment of 10th *April*, where it was 9th *April*, and gives Authority to make, or take Livery *Secundum Formam & Effectum Chartæ prædictæ*, and Livery be made upon it, it will be void; for there is no ſuch Feoffment. *R. Cro. El.* 603.

So an Attorny cannot make Livery within View. *Co. L.* 52. *b.*

If a Feoffment be by Indenture, there cannot be a Warrant of Attorny therein to make Livery, if the Attorny be not made a Party to the Indenture. *Co. L.* 52. *b.** *[Vide Margin ibid. Cont.]*

But a Deed-Poll may contain alſo a Warrant of Attorny to make Livery. *Co. L.* 52. *b.*

How Livery ſhall be made in a Feoffment of a moveable Inheritance, *Vide Ante*, (A. 2.)

(B. 4.) Livery in Law.

So, if the Feoffor ſays to the Feoffee in Sight of the Houſe or Land, *I give you yonder Houſe, &c. enter and take Poſſeſſion*, and he enters in the Life-time of the Feoffor, it ſhall be a good Livery in Law. *Co. L.* 48. *b.* *R. Pol.* 47.

Or, *Enter and enjoy it accordiug to the Effect of this Deed.* 2 *Rol.* 7. *l.* 1.

Or, if he delivers to him the Deed, and ſays, *God give you Joy of it.* 2 *Rol.* 7. *l.* 5.

Or, *I will you enjoy according to this Deed*, and ſhews him the Land. 2 *Rol.* 7. *l.* 10.

So Livery within View ſhall be good tho' the Feoffment be without Deed. *Co. L.* 48. *b.* *Jenk.* 253. *a.*

Tho' the Land lies in another County. *Co. L.* 48. *b.*

So it ſhall be good if the Feoffee enters in the Life of the Feoffor, tho' the Feoffee be a Woman, and married before her Entry, to the Feoffor, or any other, who enters and claims in the Right of his Wife. 2 *Rol.* 3. K. 1 *Mod.* 91.

Tho' the Feoffor be a Woman, and married to the Feoffee before Entry. *R.* 1 *Vent.* 186. *Pol.* 50. 2 *Lev.* 34.

So, if the Feoffee dares not enter for Fear of Death or Mayhem, it is ſufficient if he comes as near the Land as he dares, and claims it. *Co. L.* 48. *b.*

*Vide Poſt*, (B. 8.)

## (B. 5.) When Livery is not good.

But if a Man delivers a Deed of Feoffment to the Feoffee upon the Land, without ſaying, *in the Name of Seiſin*, it is not a good Livery; for it has another Effect. *Co. L.* 48. *a.*

So, if a Man ſays to another upon the Land, *I give or demiſe you this Land, for Life*, without more, it does not amount to a Livery. *Co. L.* 48. *a.*

Or, if he ſhews him the Land, without ſaying any Thing, and he enters and the Feoffor agrees thereto. 2 *Rol.* 7. *l.* 15.

So, if a Feoffment be to *A.* for Years, Remainder to *B.* in Fee, Livery cannot be given to *A.* within View; for no one can take by Livery in Law, who does not take the Freehold. *Co. L.* 49. *b.*

So, if an actual Livery was intended, and is not well executed, it ſhall not be good as a Livery in Law. 2 *Rol.* 7. *l.* 40.

(B. 6.) If the Deed, to which it relates, is void.

So, if a Man makes Livery *Secundum Formam Chartæ*, it has no Operation, if the Deed be of no Effect: as, if the Deed be, *habendum* after the Death of the Feoffor, or, *in futuro*. *Co. L.* 48. *b.* *Vide Poſt*, (B. 8.)

So,

So, if a Man leaſes for Years by Deed, and makes Livery to the Leſſee *Secundum Formam Chartæ*, the Leſſee has only for Years, and the Livery is void. *Co. L.* 48. *b.*

So, if *A.* makes a Leaſe for Years, and afterwards makes a Feoffment of the ſame Land, and Livery, without the *Ouſter* or Aſſent of the Leſſee, it ſhall be void. *Co. L.* 48. *b.* 2 *Rol.* 4. *l.* 1, 16. *Mo.* 11. (B. 7.) If it be not made of the Poſſeſſion.

So, if a Leaſe be of a Houſe and ſeveral Cloſes, and Livery is made in the Cloſes, when the Leſſee, his Wife, or Servants continue in Poſſeſſion in the Houſe; it ſhall be void for the Whole: for Poſſeſſion of the Houſe, or any Part of the Land by the Leſſee, is Poſſeſſion of the Whole. *R.* 2 *Co.* 32. *a.* 2 *Rol.* 4. *l.* 40, 50. *Mo.* 250. *Co. L.* 48. *b.*

So, if Leſſee for Years leaſes Part to *B.* at Will, and Livery be in the Part of *B.* with his Aſſent, without the Aſſent or *Ouſter* of the Leſſee for Years, it ſhall be void for the Whole. 2 *Rol.* 4. *l. ult.*

So, if the Leſſee be abſent, but his Servant continues in Poſſeſſion, and Livery is made with the Aſſent of the Servant; for his Aſſent does not diſpoſſeſs his Maſter. 2 *Rol.* 5. *l.* 7.

So, if a Stranger makes a Feoffment of Land, and Livery with the Aſſent of Leſſee for Life, without ouſting him, it ſhall be void. *Jon.* 457.

So, if Tenant by Statute-Merchant, Staple, or Extent, be in Poſſeſſion, Livery of the Land without his Aſſent ſhall be void. 2 *Rol.* 3. *l.* 53.

So, if the Leſſor enters upon the King Leſſee for Years, and makes Livery, it ſhall be void; for his Entry does not ouſt the King. 2 *Rol.* 5. *l.* 18.

But if Livery be made by the Leſſor, when his Leſſee, his Wife and Servants are all abſent, tho' he has Cattle upon the Land, it ſhall be good. *Co. L.* 48. *b.* 2 *Rol.* 4. *l.* 21, 45. *Dy.* 340.

Or, if the Leſſee be preſent and aſſenting. 2 *Rol.* 5. *l.* 15.

Or, if he be only Leſſee at Will, tho' he diſſents: for the Livery ſhall be a Determination of the Will. *Dy.* 18. *b.* 2 *Rol.* 4. *l.* 14.

So, if the Leſſor ouſts his Leſſee and Family, and makes Livery, it ſhall be good, tho' the Leſſee diſſents.

Or, if the Leſſee and his Family quit the Poſſeſſion at the Time of the Livery. *R. Dy.* 363. *a.* 2 *Rol.* 5. *l.* 5.

So, if the King Leſſee for Years leaſes to *B.* and the Reverſioner ouſts *B.* and makes Livery. 2 *Rol.* 5. *l.* 20.

So, if Huſband and Wife are Joint-tenants, and the Huſband makes a Feoffment, the Livery ſhall be good, tho' the Wife be upon the Land and diſſent. 2 *Rol.* 5. *l.* 30.

So, if a Man makes a Feoffment of Land, Part in Poſſeſſion and Part in Leaſe, and makes Livery upon the Land in Poſſeſſion (without *Ouſter* of the Leſſee, or his Aſſent) in the Name of the Whole, it ſhall be good for all that is in Poſſeſſion. *Dy.* 18. *b.* 2 *Rol.* 4. *l.* 5, 10.

So, if the other Part was in Poſſeſſion of a Diſſeiſor. 2 *Rol.* 6. *l.* 12.

So, if the Feoffor has Part in his own Right, and Part as Guardian, Livery in his Part, in the Name of the Whole, ſhall be good for the Whole. *R.* 2 *Rol.* 4. *l.* 32.

So, if Tenant in Tail makes a Diſcontinuance to the Uſe of himſelf in Fee, and afterwards leaſes for Years, and dies; a Feoffment by the Iſſue and Livery ſhall be good, without *Ouſter* or Aſſent of the Leſſee; for before Entry the Iſſue was remitted, by which the Leſſee became Tenant by Sufferance. *R.* 2 *Rol.* 5. *l.* 45.

So the King's Tenant may make a Feoffment and Livery, before Livery ſued, or an *Amoveas manum* executed. 2 *Rol.* 5. *l.* 25, 50. *Cro. El.* 523.

So

(B. 8.) If it does not take Effect immediately.

So Livery is not good, where it does not take Effect immediately; for it cannot give a Freehold *in Futuro*. *Co. L.* 217. *a.*

As, if a Leaſe be to commence at *Michaelmas*, Remainder to *A.* in Fee, and Livery is made before *Michaelmas*; it ſhall be void. *Co. L.* 217. *a.* 2 *Rol.* 109.

So, if a Leaſe for Years begins immediately, Remainder to the right Heirs of *A.* the Remainder ſhall be void; for, there is no one in whom the Freehold can veſt; for *non eſt Hæres Viventis*, and a Freehold ſhall not commence, or expect *in futuro*. *Co. L.* 217. *a.*

So, if *A.* leaſes for Life, and afterwards grants the Reverſion, *habendum* after the Death of the Leſſee for Life; it will be void, being made to commence *in futuro*. *R.* 1 *Rol.* 261. *Vide infra.*

So, if a Leaſe be 10th *June*, to *A.* for Life, *habendum a Die Datûs*, and Livery by Attorny 23d *July*; it ſhall be void. *R. per* 3 *J.* 2 *Cro.* 153. 1 *Rol.* 229. *R. Cro. Car.* 388. 1 *Rol.* 828. *l.* 10.

So, if Livery be made the ſame Day by the Leſſor in Perſon. *R.* 1 *Rol.* 828. *l.* 20. 829. *l.* 10.

So, if *A.* leaſes for Years to *B.* and afterwards confirms his Leaſe, and grants to *B.* for one Month after his former Term, Remainder to *A.* in Fee; it will be a void Grant of the Fee; for he does not grant it as a Reverſion. *R.* 1 *Rol.* 828. *l.* 30.

If *A.* enfeofs *B.* of 10 Acres out of 100 which *B.* or his Heirs ſhall chuſe, it ſhall be void: for the Livery cannot operate *in Futuro*, at his Election. 1 *Rol.* 829. *l.* 20.

So, if the King by Patent leaſes Lands to *A. habendum a Die Datûs*; it ſhall be void: for a Freehold cannot wait, tho' it be by the King's Letters Patent. *R.* 5 *Co.* 94. *b.*

But by Grant a Freehold may be created to commence *in futuro:* as, the King may grant an Office for Life to *B.* to commence after the Death, *&c.* of *A.* who has it at Will. *R. Sal.* 466. *Skin.* 446, 580.

So a Rent *de novo* may be granted to commence upon a Contingency. *Sal.* 466.

So a Grant of a Rent, *habendum* after his Death if he has not Iſſue then living. *R.* 3 *Lev.* 370.

So a Man, by Covenant to ſtand ſeiſed to the Uſe of another, may make an Eſtate to commence *in futuro*. 2 *Cro.* 180. 3 *Lev.* 371. *Vide Covenant*, (G. 1.)

So a Surrender of a Copyhold, *habendum* after his Death, is good; for the Eſtate veſts in the Lord. *R. Noy* 152.

So, if a Leaſe be to *A.* for Life *habendum a Die Datûs*, and the Deed be not delivered till the Day after the Date, and then Livery is made by Attorny, it ſhall be good. 2 *Cro.* 153. 1 *Rol.* 829. *l.* 5. 1 *Rol.* 230.

If a Leaſe be to *A.* for 3 Lives 8th *Auguſt*, *habendum a Die Confectionis*, and Livery is made by the Leſſor himſelf 9th *September* after, it ſhall be good. *R.* 2 *Cro.* 458. 2 *Rol.* 109. *R. Mo.* 759. *R. Cro. Car.* 95.

So, if a Leaſe be by Huſband and Wife, to *A.* for Life, *habendum* after *Michaelmas* next, and Livery is made by them after *Michaelmas*: it ſhall be good. *R.* 2 *Cro.* 563.

So, if Livery be by Attorny, where the Letter of Attorny is expreſs to make Livery after *Michaelmas*. *R.* 2 *Cro.* 563.

So, if it be found by Verdict, *quod A. dimiſit*, tho' the Leaſe appears to be *a Die Datûs*, it ſhall be good; for it ſhall be intended that Livery was made after the Day. *Cro. Car.* 96.

But

But if the Jury do not find a Demiſe, or when Livery was made, it cannot be intended after, any more than before. *Per* 3 *J.* 1 *Rol.* 230.

So, if a Feoffment be by an Infant to commence at a future Day, before which the Feoffor comes of full Age, and after the Day he makes Livery, it ſhall be good. 2 *Rol.* 109.

# FERÆ NATURÆ.

*Vide Biens*, (F.)

# FERRY.

*Vide Piſchary*, (B.)

# FIERI FACIAS.

*Vide Execution*, (C. 4, &c.)—*Proceſs*, (F. 5, 7.)

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# FINE.

## (A) The Antiquity of it.

A Fine is a Feoffment upon Record. *Co. L.* 10. *a.*

But it is an improper Feoffment. 1 *Sal.* 340.

And it is called a Fine, becauſe *Finem ponit litibus. Co. L.* 262. *Pl. Com.* 369.

And it is as antient as any Court of Record. *Pl. Com.* 357. *a.* 368. *b.*

And it was levied before the Conqueſt. 2 *Inſt.* 511. *Pl. Com.* 368. *Dub. Mad. Form. Int.* 13.

## (B) By whom it may be levied.

ALL Perſons of full Age and ſound Memory may levy Fines of Lands of which they are ſeiſed. *Vide Weſt Symb.* 3. *a.*

Tho' ſeiſed only of a Reverſion or Remainder. *Vide Weſt Symb.* 3. *b.*

So, Huſband and Wife, of Lands of the Wife.

So a Parcener, Joint-tenant, or Tenant in Common may levy a Fine of his Purparty. *Vide Weſt Symb.* 3. *b.*

So a Corporation Sole may levy a Fine of his Lands, which he has in his Corporate Capacity.

So a Man may levy a Fine, tho' he be outlawed in a Perſonal Action.

So a Fine by a Man *Non compos*, tho' it ought not to be levied, binds for ever, when it is levied.

So a Fine by a Man attainted for Treaſon or Felony, binds all but the King. *Vide Weſt Symb.* 3. *a.*

So, a Fine by an Alien.

So a Fine by an Infant, or *Feme Covert* without her Huſband, binds till it be avoided. *Vide Baron and Feme*, (P. 1.)—*Enfant*, (B. 2.)

But a Fine cannot be levied by a Corporation Aggregate: for it cannot act but by Attorny, and it cannot make Conuſance by Attorny.

So, if Commiſſioners take a Fine of an Infant, &c. the Court will grant an Attachment againſt them; and upon Examination and Inſpection the Fine ſhall be vacated. *R. Skin.* 24.

## (C) To whom.

ALL Perſons who may be Grantees, may be Conuſees of a Fine. *Vide Weſt Symb.* 4. *a.*

So a Fine may be levied to a Corporation Aggregate. *Vide Weſt Symb.* 4. *a.*

But a Fine cannot be levied to any not a Party to the Writ of Covenant, except by way of Remainder.

Nor to 2 Perſons and their Heirs: for the Court will refuſe it. *R.* 1 *Leo.* 62.

Yet the King may levy a Fine to 2 and their Heirs, and the Court will not refuſe it.

So, the King's Tenant, for the King's Benefit.

## (D) Before whom.

BY the *St.* 18 *Ed.* 1. *De modo levandi Fines*, A Fine ought to be levied before 4 Juſtices in *C. B.* or in *Eyre*, and not elſewhere.

And the Number of Juſtices ought to be above one; and therefore, they were named antiently, that the Number might appear. 2 *Inſt.* 514. 1 *H.* 7. 10, 11.

Now by *St.* 4 *H.* 7. Fines may be levied before the Juſtices of the Common Pleas.

And therefore, the Number of the Juſtices is not now material. 2 *Inſt.* 515.

If it be before 3 Juſtices in *C. B.* omitting the other, it ſhall be good. *Semb. Cro. El.* 677.

So a Fine may be levied in the Counties Palatine of *Lancaſter*, and *Cheſter*. *Vide Weſt Symb.* 5. *b.*

So, before Juſtices in *Eyre*. 2 *Inſt.* 515.

And in a Court of *Antient Demeſne*, of Lands of *Antient Demeſne*. *R.* 1 *Sal.* 340. *Vide Antient Demeſne*, (G. 2.)

But a Fine cannot be levied in *B. R.* 2 *Inſt.* 515.

So, by the *St. de modo levandi Fines*, 18 *Ed.* 1. It ought to be before the Juſtices of *C. B.* or in *Eyre*, *and not elſewhere*: and therefore, where a Man has Power *tenere placita*, a Fine cannot be levied before him. 2 *Inſt.* 515.

So, againſt thoſe negative Words of the Statute, the King cannot grant a Power to levy a Fine. 2 *Inſt.* 515.

So a Man, or a Corporation, cannot preſcribe for levying Fines in his Court. *Dub.* 1 *Leo.* 188. *Cro. El.* 116. *Ow.* 93. 1 *Sal.* 340.

So a Fine cannot now be levied in the *Exchequer*, tho' it was antiently levied there. *Mad.* 145.

(E) The

## (E) The Parts of a Fine.

### (E. 1.) The Original Writ.

(E. 1.) Upon what Writ it may be levied.

THERE are 5 Parts of a Fine. 5 *Co.* 38. *b.*

The firſt Part of every Fine is the Original Writ. 5 *Co.* 38. *b.*

By the *St.* 18 *Ed.* 1. The Order of Law does not ſuffer that a final Accord be levied in the King's Court without an original Writ. *D. Cont.* 21 *Ed.* 4. 60. *b.* 62. *a.* 4. *b.* *Mad. Form. Int.* 17.

The moſt uſual Writ, upon which a Fine is levied, is a Writ of Covenant, which is not Perſonal, but Real, and requires Performance and Execution of the Covenant. 1 *Sal.* 340.

Yet it may be levied upon every Writ, by which Land is demanded, or by which Land is charged or bound, or which concerns Land in any Sort. 5 *Co.* 38. *b.* 1 *Sal.* 340.

As, in a Writ of Right. 1 *Sal.* 340.

A *Warrantia Chartæ.* 5 *Co.* 39. *Bend. pl.* 138. *Mad. Form.* 368, 370.

A Writ of *Meſne.* 5 *Co.* 39.

A Writ of Cuſtoms and Services. *Vide Weſt Symb.* 6. *a.* 2 *Inſt.* 513.

A *Præcipe quod reddat.* 5 *Co.* 39.

*Per Quæ Servitia*, or *Quem redditum reddit.* 5 *Co.* 39.

*De rationabilibus Diviſis.* 5 *Co.* 39.

In an Aſſiſe of *Mortd'anceſtor.* *Mad. Form.* 365, 366.

In a Writ *quod habeat* a Way *ultra terram* of the Conuſor. *Vide Weſt Symb.* 6. *b.* 2 *Inſt.* 513.

So, in a Writ of *Darrein Preſentment*, *Quare Impedit*, *&c.* 2 *Inſt.* 514. *Mad. Form.* 364.

So a Fine may be levied by a Vouchee to a Demandant, or by the Demandant to him. 2 *Inſt.* 514.

Or by Tenant by Receit to a Demandant, or by the Demandant to him. 2 *Inſt.* 514.

But a Fine without an Original Writ is erroneous. 2 *Inſt.* 513.

So, if it contains more than was in the Original. 2 *Inſt.* 513.

Or be levied to more Perſons. 2 *Inſt.* 514.

The Writ of Covenant, upon which a Fine is levied, ought to be written without Razure, or Interlineation.

It ought to be without falſe *Latin.*

The *Teſte* ought not to be upon a Day not *Dies Juridicus.*

It ought to have 15 Days between the *Teſte* and Return.

It ought, regularly, to be teſte'd before the *Dedimus Poteſtatem.*

Or, upon the ſame Day. *Hut.* 135. *Vide Poſt*, (E. 7.)

It ought to be returned as another Writ.

If a Fine be of a Thing not comprized in the Original, it is void for that: As, if the Writ be of the Manor of *B.* and the Fine of the Manors of *B.* and *C.* it is voidable for the Manor of *C.* 2 *Inſt.* 513.

(E. 2.) Of what Things.

A Fine may be levied of all Things, of which a *Præcipe quod reddat* lies. 2 *Inſt.* 513.

As, of all Manors, Meſſuages, Lands, Tenements, and Hereditaments. *Weſt Symb.* 6. *b.*

Of a Rent *in Eſſe.* *Vide Weſt Symb.* 6. *b.*

So, of a Rent not *in Eſſe* before. *Vide Weſt Symb.* 6. *b.*

Of

Of a Reverſion, or Remainder. *Vide Weſt Symb.* 7.

So now, ſince the *St.* 32 *H.* 8. 7. it may be levied of Rectories, Vicaridges, Tithes, Penſions, Oblations, and all Eccleſiaſtical Inheritances made Temporal.

Of a Chantry. *Vide Weſt Symb.* 7.

So it may be of a Seigniory. *Vide Weſt Symb.* 7.

Of all Services; As, Homage, Fealty, *&c.* *Vide Weſt Symb.* 6. *b.*

Of Acquittal, and of every Thing, for which a *Præcipe quod faciat* lies, 2 *Inſt.* 513.

So it may be levied of Common of Paſture. *Vide Weſt Symb.* 6. *b.*

Of a Corody. *Vide Weſt Symb.* 6. *b.*

Of an Office: As of the Cuſtody of a Foreſt.

Of a Boilary.

Of 2 Pools and a Fiſhery in the Water of *D.*

Of an Annuity.

(E. 3.) In what Order.

All Things, of which a Fine is levied, ought to be mentioned in proper Order. *Vide Weſt Symb.* 8. *b.*

As, an Honour before a Caſtle, a Caſtle before a Manor, a Manor before a Meſſuage. *Vide Weſt Symb.* 8. *b.*

A Meſſuage, Toft, Mill, Dovecote, Garden, Land, Meadow, Paſture, Wood, Heath, Moor, Juncary, Marſh, Alder, Broom, Rent, follow according to the Verſes in the Regiſter. *Meſ. Toft. Mol. Col. Gard. Ter. Prat. Paſt. Boſ. Brue. Mora. Junca. Mariſc. Alnet. Ruſc. Redd. Sectare priorq.* *Vide Weſt Symb.* 9.

Things general ought to be put before ſpecial: As, Land, the *Genus*, before Meadow, Paſture, Wood, *&c.* which are *Species* of it. *Vide Weſt Symb.* 8. *b.*

So Things intire, before parts of a Thing. *Vide Weſt Symb.* 8. *b.*

So Things excepted, after the Thing out of which they are excepted. *Vide Weſt Symb.* 8. *b.*

If there are ſeveral diſtinct Things, each, after the firſt, begins with theſe Words, *Ac de*, *Necnon*, *Acetiam*, *Præterea*, *Ac Ulterius*, *Ac inſuper*; and ſo *ſeriatim toties quoties.* 2 *Inſt.* 514.

And for want of the regular Order of theſe Words in a Fine, the Forgery of it has been detected. 2 *Inſt.* 514.

(E. 4.) By what Names. *Vide Grant*, (E. 1, &c.)

In a Fine, an Honour may be named by the Name of *the Honour of T. Vide Grant*, (E. 4.) *Vide Weſt Symb.* 7. *b.*

Or may paſs by the Name of a Manor. *Vide Weſt. Symb.* 7. *b.*

So a Caſtle, Hundred, *&c.* may be demanded by their own Names. *Vide Weſt Symb.* 7. *b.*

Or may paſs by the Name of a Manor. *Vide Weſt Semb.* 7. *b.*

So a Manor may be demanded by the Name of *the Manor of B.* without naming any Vill in which it lies. *Vide Weſt Symb.* 7. *b.*

And by the Name of a Manor, a Manor only in Reputation paſſes. *Cont. Noy* 7. *R. Cont. Cro. El.* 524, 707. *Vide* 1 *Lev.* 27. *R. acc.*

So, Lands reputed Parcel for 80 Years. *R.* 1 *Lev.* 27. *Vide Grant*, (E. 10.)

So, by the Name of a Meſſuage, a Curtilage, Garden, Orchard, Shop, Mill, Dovehouſe paſs. *Vide Weſt Symb.* 7. *b.*

So, a Toft, Cottage, Chamber, Cellar, *&c.* *Vide Weſt Symb.* 7. *b.*

Or they may paſs by their reſpective Names. *Vide Weſt Symb.* 7. *b.*

So, a Chapel, or Hoſpital. *Vide Weſt Symb.* 7. *b.*

So it may be levied of any Thing, of which a *Præcipe quod reddat* lies. 2 *Inſt.* 513.

Or, of which a *Præcipe quod faciat*, *permittat*, or *teneat* lies. 2 *Inſt.* 513.

Land ought to be demanded by the Number of Acres in ſuch a Vill. *Vide Weſt Symb.* 8.

If the Intent appears, that all the Eſtate in *B.* ſhall be included, all paſſes by ſo many Acres as is the reputed Meaſure; tho' by the *St. de terris menſurandis* the Meaſure is not above 3 Fifths of the Eſtate. *Semb.* 2 *Mod. Ca.* 276. *

* 2d Part of 2 *Mod. Ca.*

So, *of two Parts of a Manor*, is ſufficient; without ſaying, in 3 Parts to be divided. 1 *Leo.* 115.

But a Fine of a Tenement is not good: for it is not of a certain import. *R.* 1 *Leo.* 188.

The uſual Manner is to name the Lands in ſuch a Pariſh, Vill, or known Place. 2 *Mod.* 48.

So it may be in a Hamlet. 2 *Mod.* 48.

Or, of a Tenement in *Golden-Lane*, tho' it be not a Vill, or a Hamlet. 2 *Mod.* 47. *R. Cro. El.* 693.

Or, in the Liberty of *W.* *R.* 2 *Mod.* 49.

So, if there are the Vills of *W.* and *C.* within the Liberty of *W.* a Fine of Lands in the Liberty of *W.* paſſes the Lands in all the Vills in that Liberty. *R.* 2 *Mod.* 49.

So a Fine of Lands in a Pariſh paſſes Lands in all the Vills in the ſame Pariſh. *R.* 1 *Vent.* 170. 2 *Cro.* 120.

So, if a Fine be of a Houſe, or Land, by a known Name, tho' there be not any ſuch Vill or Place; as, if the Houſe be called *Eaſton* in *B.* and a Fine be of Lands in *A. Eaſton* and *C.* omitting *B.* it ſhall be good. *R. Cro. Car.* 269, 276. *Godb.* 440. *Jon.* 301.

If a Cloſe be named *A.* and a Fine be of Land in *A.* where there is no ſuch Vill. *R.* 2 *Cro.* 574.

So, if a Fine be of Paſture in *Arſhcomb*, where it is writen *Arſcomb.* 2 *Cro.* 574.

If a Fine be of Lands in *O.* to the Uſe of *B.* of Lands in *S.* which is a Place known in the Vill of *O.* to the Uſe of *C.* It ſhall be good to *C.* for the Lands in *S.* *R.* 1 *And.* 245.

But if a Fine be levied of Lands in *A.* this paſſes only Land in the Vill of *A.* and not Land in *B.* or any other Vill within the Pariſh of *A.* *R.* 2 *Cro.* 120. *Vide Pariſh*, (C. 1, 2.)

Or, in *B.* it does not paſs Land in a Hamlet of the ſame Pariſh, which has ſeparate Conſtables: for it is a diſtinct Vill. *R.* 1 *Vent.* 143. *Adm.* 1 *Vent.* 170.

(E. 5.) The Caption of the Fine. In Court.

By the Common Law, the Parties who levied a Fine ought to do it in Court in Perſon, by which the Court might judge of their Sufficiency. 2 *Inſt.* 512. *Vide Mad. Form. Int.* 14.

And therefore, after the Writ of Covenant compounded, indorſed, and entred at the Alienation-office, and affixed to the *Præcipe* and Concord, it ſhall be delivered to the Serjeant. *Comp. Att.* 95.

By the *St.* 18 *Ed.* 1. *de modo levandi Fines*, when the Writ is read in Preſence of the Parties, the Serjeant ſhall ſay, *Conge d'accorder*, The Juſtice ſays, *Que donera*; the Serjeant names the Parties; and when it is agreed of the Sum, the Juſtice ſays *criez la peace*, and then the Serjeant recites the Concord *Vide* 2 *Inſt.* 512.

If there be a *Feme Covert* ſhe ſhall be examined by the Puiſne Judge, and her Examination recorded. *Vide* 2 *Inſt.* 515.

And always, where a *Feme Covert* levies a Fine, ſhe ought to be examined; and if ſhe does not aſſent, the Fine ought not to be received. 2 *Inſt.* 515.

So, if a Fine be levied of Land to Huſband and Wife, who grant and render it; there the Wife ought to be examined. 2 *Inſt.* 515.

But where a Fine is levied of Land to Huſband and Wife, ſhe need not be examined. 2 *Inſt.* 515.

And if her Examination be recorded, it cannot afterwards be averred, that ſhe was not examined. 2 *Inſt.* 515.

So a Fine taken in Court need not be ſigned by the Hand of the Judge, as is done where it is taken out of Court. *Semb. Dy.* 320. *b.*

(E 6.) Out of Court. Before the Chief Juſtice.

The Chief Juſtice of *C. B. Virtute Officii* may take the Caption of a Fine out of Court, without a *Dedimus Poteſtatem.* 2 *Inſt.* 512. *Dy.* 224. *b. Cro. El.* 469.

The *Præcipe* and Concord in Paper ſhall be read to the Parties in the Preſence of the Chief Juſtice, and being acknowledged and ſubſcribed by them, the Chief Juſtice ſets his Name to it. *Compl. Att.* 96.

Afterwards it ſhall be ingroſſed in Parchment, and ſigned by the Ch. J. and upon that the Curſitor makes the Writ of Covenant, which ſhall be compounded at the Alienation-office, and the King's Silver paid, and the Fine conveyed to the other Offices. *Compl. At.* 96.

So a Judge of Aſſiſe may take a Fine, without a *Dedimus Poteſtatem*, if he has a ſpecial Patent to take them in his Circuit. *Dy.* 224. *b.*

But the Chief Juſtice of *B. R.* or any other Judge, cannot take the Caption of a Fine, without a *Dedimus Poteſtatem.* *Dy.* 224. *b.*

(E. 7.) By *Dedimus Poteſtatem.*

By the *St. Carl.* 15 *Ed.* 2. If any by Age, Impotence, or Caſualty, be withholden that he cannot come to our Court, 2 or one of the Juſtices, by Aſſent of the Reſt, ſhall go to the Party diſeaſed, and receive his Conuſance on the Plea in which the Fine ought to be levied, *&c.*

If there go but one, he ſhall take with him an Abbot, Prior, Knight, or Man of good Fame or Credit, and certify the Court thereof by the Record; that all things incident to the Fine being examined by him, it may be duly levied.

And upon this a *Dedimus Poteſtatem* is granted to any Judge, Serjeant, or Knight only, to take the Fine: for it is now uſual for one only to do it, tho' the Statute ſays, *If one go, he ſhall take with him an Abbot, &c.*

So it may be granted to other Commiſſioners, if a Knight be named in the Writ of *Dedimus Poteſtatem.*

After the Writ of Covenant, and *Dedimus Poteſtatem* ſealed, compounded, and affixed to the *Præcipe* and Concord, the Judge, *&c.* or Commiſſioners ſhall take the Caption of the Fine.

The *Dedimus Poteſtatem* ſhall be good, tho' it bears *Teſte* before the Writ of Covenant, and tho' it recites the Writ of Covenant to be depending. 1 *Rol.* 223. *Cro. El.* 677. *Vide infra.*

Or, after the Caption. *R. Cro. El.* 275.

So the Caption may be taken of one, at one Time or Place, and of another elſewhere. *Cro. El.* 577.

If the *Dedimus Poteſtatem* be to take of 4, and it be taken of 3, and the other refuſes, it ſhall be made good for thoſe 3. *R. Cro. El.* 576.

But if the *Dedimus Poteſtatem* be to 2 jointly, a Caption by one will be erroneous. *Cro. El.* 240.

If the Return be, *Executio iſtius brevis patet in quodam panello annex'*, for, *in quâdam Schedulâ*, it is not material. *R.* 2 *Cro.* 78.

If the Caption be by a *Dedimus Poteſtatem*, which bears *Teſte* upon the ſame Day with the Writ of Covenant; yet it ſhall be good, tho' the Writ recites the Writ of Covenant to be depending. *Hut.* 135. *R.* 2 *Cro.* 11. *Vide Ante*, (E. 1.)

So, if the *Dedimus Poteſtatem* bears *Teſte* before the Writ of Covenant. *Semb.* 1 *Rol.* 223. *R. Cont. Cro. El.* 740. *Vide Supra.*

Tho' it be 5 Years before. *Jon.* 420.

So, if the Caption be before the Writ of Covenant, the Fine ſhall be good: for the Fine being afterwards ingroſſed, cannot be avoided. *R.* 2 *Vent.* 48. *R. Cro. El.* 275.

Or, after the Return of the Writ of Covenant, tho' the Writ is not then depending. *R. Hut.* 135. *R.* 2 *Jon.* 83.

So, if there be a Caption, and the King's Silver paid, the Fine ſhall be good tho' the Conuſor dies before the Fine be ingroſſed. 2 *Inſt.* 511. 5 *Co.* 39. *a.*

So, if the Conuſor dies after the Caption, and before the King's Silver paid, if the Fine be afterwards ingroſſed as a Fine of a Term before his Death: for it cannot be averred againſt the Record. *R. Hob.* 330. *R.* 3 *Mod.* 141. *R.* 2 *Vent.* 48.

So, if the Conuſor dies before the Time of certifying the Caption: for it cannot be averred againſt the Certificate, which is a Record. 2 *Cro.* 12. *Dy.* 89. *b.*

But if it appears upon Record that the Conuſor died before the Writ of Covenant returned, it will be Error: for by his Death the Writ abates. *R. Cro. El.* 469. *R.* 2 *Jon.* 181. *Ray.* 462. *R. Skin.* 343.

So, if one Conuſor dies, it will be Error, and the whole Fine avoided. *R.* 3 *Mod.* 99. *Semb.* 2 *Lev.* 127.

So, if it appears upon Record that the Conuſor died before the King's Silver was paid. *Semb.* 2 *Leo.* 127. 2 *Inſt.* 511.

By the *St.* 23 *El.* 3. *Sect.* 5. They who certify the Caption of a Fine, *&c.* ſhall mention the Day and Year of the Acknowledgment: and no Clerk ſhall receive it otherwiſe, on pain of 5*l.* for every Offence.

If a Judge, or Commiſſioners, refuſe to certify, a *Certiorari* lies to them, commanding them to certify.

And if they do not, an *Alias*, *Pluries*, and Attachment lies againſt them.

But by the *St.* 23 *El.* 3. *Sect.* 5. They are not bound to certify but within a Year after the Caption.

If a Judge or Commiſſioner dies before Certificate, a *Certiorari* goes to their Executors.

If a Caption be by *R. M. Knight*, it cannot be alledged, that he was not a Knight. *R.* 2 *Cro.* 11.

If a Caption recites *Præcipe J. Foſter*, where the Writ and *Dedimus Poteſtatem* are *inter J. Forſter*, it is not material: For they are the ſame Name in Sound. *R.* 2 *Cro.* 77.

## (E. 8.) Licence to agree.

The 2d Part of a Fine is the Licence to agree. 5 *Co.* 39.

For upon every Fine there ought to be paid a Sum *pro licentiâ Concordandi*. *Vide* 2 *Inſt.* 511.

And this is an antient Revenue of the Crown. 5 *Co.* 39. *a.* 2 *Inſt.* 511.

This

This Fine is the ſame as upon every Original in a Real Action, *viz.* one Noble for every 5 Marks *per Ann.* 2 *Inſt.* 511.

And the Poſt-fine is as much as the firſt Fine, and half as much more. 2 *Inſt.* 511.

If the Land be under 5 Marks, there ſhall be no Fine in the Hanaper, but only one Noble *pro Licentiâ Concordandi.* 2 *Inſt.* 511.

If no value of Land appears indorſed upon the writ of Covenant, or otherwiſe, by which the King's Silver may be taxed, it is Error. *R.* 2 *Jon.* 83.

But it is ſufficient, if the King's Silver be indorſed upon the Writ of Covenant, under the hand of the Judge, tho' it be not entred upon the Roll. *Semb. Dy.* 320. *b.*

## (E. 9.) The Concord.

(E. 9.) Fine *Sur Conuſance de Droit come ceo, &c.*

The 3d Part of a Fine is the Concord. 5 *Co.* 39. *a.*

And this contains the Subſtance of the Fine. 5 *Co.* 39. *a.*

All Fines agreed to be levied are Executed, or Executory. *Vide Weſt Symb.* 5. *b.* 2 *Inſt.* 513.

A Fine Executed is, *Sur Conuſance de Droit come ceo, &c.* Upon a Releaſe, or Upon a Surrender. *Vide Weſt Symb.* 6. 2 *Inſt.* 513.

A Fine *Sur Conuſance de Droit come ceo que il ad de ſon Done* is ſo called from thoſe Words in the Fine, and it is the moſt high and powerful Fine.

Antiently it had only theſe Words *Recogn' Manerium, &c. eſſe jus ipſius A. ut illa quæ iidem A. & B. habent de Dono prædict' D.* 2 *Inſt.* 513.

Afterwards theſe Clauſes were added, *Et remiſerunt & quietè clam', &c.* and the Clauſe of Warranty. 2 *Inſt.* 513.

A Fine *Sur Conuſance De Droit come ceo, &c.* grants the Fee to the Conuſee: and therefore there cannot be a Remainder over upon ſuch Fine. *Pl. Com.* 248. *a.*

But it grants the Fee only by Implication, which may be controuled by an expreſs Limitation for Life. *R.* 1 *Sal.* 340.

If the *Præcipe* entred in the Concord be *duobus Meſſuagiis*, where the Writ of Covenant is *duobus toftis*, it is not material: for the Concord relates to the Writ of Covenant, and the *Dedimus Poteſtatem*, and Entry of the *Præcipe* upon the Concord is more than is neceſſary, and ought to be a Rehearſal of the Subſtance of the Writ; but if it be variant, it is idle. *R.* 2 *Cro.* 78.

If a *Dedimus Poteſtatem* and Concord upon it be 5 Years before the Writ of Covenant, where by the Foot of the Fine it is ſaid, *Hæc eſt finalis Concordia capta* 7 *Jac.* it ſhall be good: for it ſhall be intended another Concord according to the Foot of the Fine. *R. by* 2 *J.* 2 *Cont. Jon.* 420.

(E. 10.) Fine upon a Releaſe.

A Fine upon a Releaſe is, when he in Reverſion releaſes by Fine his Eſtate to his Leſſee for Life, or Years.

If a Joint-tenant releaſes by Fine to his Companion. 2 *Cro.* 696.

If a Donor of 50 Acres has other 50 Acres in *K.* and levies a Fine of 100 Acres to the Donee, who renders 100 Acres to the Donor for Life, *&c.* this operates as a Releaſe as to the 50 Acres contained in the Gift, and the Render operates as to the other 50 Acres only: for it ſhall be reſtrained to the Quantity intended by the Deed declaring the Uſes. *Poph.* 104.

But a Fine does not operate by Way of Releaſe, where the Conuſee has no Eſtate of Freehold, either in Remainder, or Reverſion, or there is no Privity between the Conuſor and Conuſee. *Ray.* 146. *Vide Releaſe,* (B. 3.)

A Fine upon a Surrender is, when a Leſſee for Life, or *pur auter vie*, Tenant in Tail after Poſſibility, Tenant by the Curteſy, or in Dower, by Fine ſurrender their Eſtates to him in Reverſion. (E. 11.) Fine upon a Surrender.

A Fine upon a Surrender is in the Form of a Fine *Sur Conuſance de Droit come ceo, &c.* ſaving that they add the Words, *ſurſum reddidit*, and omit the Warranty.

Fines Executory are a Fine *Sur Conuſance de Droit tantum*, or, *Sur Grant & Render*. *Vide Weſt Symb.* 6. (E. 12.) *Sur Conuſance de Droit tantum.*

A Fine *Sur Conuſance de Droit tantum* omits the Clauſe *come Ceo que il ad de ſon Done*.

A Fine *Sur Grant & Render*, is when by the ſame Fine the Conuſee renders the Eſtate granted, or Part of it, or a Rent out of it, to the Conuſors, or ſome of them. (E. 13.) *Sur Grant & Render.*

And this Fine ſhall be always levied upon a Fine *Sur Conuſance de Droit come Ceo, &c.* for, if it ſhould be levied upon a Fine Executory, the Conuſee has nothing which he can render to the Conuſor, till Execution. *Vide Weſt Symb.* 6.

Or it may be upon Fines upon a Releaſe, or Surrender: for thoſe are executed.

The Render ought to be of a Thing iſſuing out of the ſame Land contained in the Fine, and not of a Thing collateral, or of another Nature, which is not iſſuing out of it, nor incident to it. 2 *Inſt.* 514.

It ought to be to ſome Party to the Fine, if it be not by Way of Remainder. 2 *Inſt.* 514. 4 *Leo.* 26.

So a Render ſhall be only of the Lands granted by the Fine, and intended to be paſſed by it, tho' the Parcels comprized are ſufficient for more Lands: and therefore, if a Donor of 50 Acres in *K.* having other 50 Acres there in Fee, by Fine grants 100 Acres in *K.* to the Donee, who renders 100 Acres to the Donor for Life, *&c.* Nothing ſhall be rendered but the 50 Acres in Fee. *R. Poph.* 104.

And a Fine *Sur Grant & Render* operates as a Feoffment and Refeoffment. *R.* 1 *Sal.* 337.

But a Render ſhall be tranſpoſed by Conſtruction, to make it effectual: As, if a Fine be to *D.* who renders a Rent out of it, *&c.* to *A.* and *B.* and the Heirs of *B.* and afterwards renders the Tenements out of which, *&c.* to *A.* and *B.* for Life, Remainder to *C.* in Tail, Remainder to the Heirs of *B*; it ſhall be a good Render of the Rent. 1 *Leo.* 255. *Cro. El.* 226.

So, if a Render be of a Remainder to *A.* upon Condition, and for Default, *&c.* to *B*; it ſhall be good. *Pl. Com.* 34. *b.*

So a Fine may be *Sur Conceſſit*, when Tenant for Life, or for Years grants his Eſtate. (E. 14.) *Sur Conceſſit.*

So, if he in Remainder grants his Eſtate to Tenant for Life. 2 *Cro.* 40.

So, if *A.* and *B.* levy a Fine to *C.* who renders to *B.* in Tail, and if he dies without Iſſue, *quod Tenementa integre remanebunt* to *A.* this operates as a Fine *Sur conceſſit* of the Reverſion to *A.* *R. Cro. El.* 727, 792.

A Fine *Sur Conceſſit* grants only that which the Party may lawfully grant; and does not deveſt the Eſtates of others in Remainder. *Semb. per* 2 *J.*, 2 *Lev.* 154.

A Fine Executory may be executed by Entry, or by Writ. *Vide Weſt Symb.* 57. *Vide Execution*, (A. 6.) (E. 15.) How a Fine Executory ſhall be executed.

For the Conuſee may enter into the Lands comprized in the Fine. *Vide Weſt Symb.* 57.

Or, within a Year, may have an *Habere facias Seiſinam. Vide Weſt Symb.* 57.

And after the Year, a *Scire facias. Vide Weſt Symb.* 58.

A *Scire facias* for executing a Fine may be brought by the Iſſue of Tenant in Tail. *Weſt Symb.* 58.

Or, by him in Remainder. *Co. Ent.* 632. *b.*

Or, by the Heir of him in Remainder. *Weſt Symb.* 59. *a. Co. Ent.* 625, 630.

To a *Scire facias* for executing a Fine, the Defendants may plead *Quod Partes Finis nihil habuerunt. Weſt Symb.* 59. *a Co. Ent.* 631. *b. Vide Poſt*, (H. 1.)

*Quod Partes finis habuerunt* only for Life. *Co. Ent.* 633. *a.*

So, to a *Scire facias* for executing a Fine by the Heir, the Defendant may plead, that the Plaintiff is a Baſtard. *Weſt. Symb.* 63. *b.*

That another was Heir, *cujus Statum ipſe habet. Weſt Symb.* 62. *a.*

Until a Fine be executed, Nonclaim to bar any Stranger does not begin. *Pl. Com.* 357. *b.*

## (E. 16.) The Note, and Foot of the Fine.

After Conuſance, and before the ingroſſing of a Fine, the Chirographer makes a Note of the Fine, which contains an Abſtract of the Original and the Concord. 5 *Co.* 39. *a.*

The Office of Chirographer is appointed by the King's Patent. *Dy.* 176. *a. Vide Courts*, (C. 2.)

If the Writ of Covenant with the *Dedimus Poteſtatem* be returned, the Concord made, the King's Silver paid, and the Note of the Fine made, the Fine is then compleat. *Semb. Pl. Com.* 431.

So, by the *St.* 5 *H.* 4. 14. Writs of Covenant, and other Writs whereon Fines be levied, with the *Dedimus Poteſtatem* if any be, the Knowledges, and Notes of the ſame, before they be drawn out of the Common Bench by the Chirographer, ſhall be inrolled of Record by the Chief Clerk (*viz.* the *Cuſtos Brevium*) for the old Fee of 22*d.* To the Intent, that if the Notes in the Cuſtody of the Chirographer, or the Fines, be imbezilled, Recourſe may be to the ſaid Roll to have Execution in the ſame Manner as if the Fines were not imbezilled. *Vide Poſt*, (G. 3.)

And this is called the Foot of the Fine.

Which contains the Day, Year, and before whom levied. 5 *Co.* 39. *a.*

## (F) Quid Juris clamat, &c.

IF a Fine be of a Reverſion or Remainder, if the Particular Tenant refuſes to attorn, a *Quid Juris clamat* iſſues, before the ingroſſing, out of the Record remaining with the *Cuſtos Brevium. Weſt Symb.* 47, *&c. Pl. Com.* 431. *b.*

So, if a Fine be of a Rent, and the Terre-tenant refuſes Attornment, a *Quem redditum reddit* iſſues. *Weſt Symb.* 52. *b.*

So, if a Fine be of a Seigniory, Manor, *&c.* a *Per quæ Servitia. Weſt Symb.* 53. *a.*

So, tho' a Fine be by one Parcener, of her Reverſion to the other. *R.* 3 *Leo.* 6.

If

If the Conuſee dies pending the *Quid Juris clamat*, his Heir ſhall have a new Writ. *Cro. El.* 693.

But a *Quid juris clamat* does not alter the Fine, tho' the Defendant has Judgment for him.

And if he pleads to Part that he himſelf has the Fee, and attorns for the Reſidue; the Fine may be ingroſſed for the Whole. *R. Cro. El.* 693.

By the *St.* 23 *El.* 3. No Attornment on a Fine ſhall be entred on Record, except the Perſon, mentioned to attorn, appear in Court in Perſon, or by Attorny warranted by Hand of the Judge, or Juſtices of Aſſiſe, on a Writ of *Quid Juris clamat*, *Quem Redditum reddit*, or *Per quæ Servitia*, as the Caſe requires: and if entred, it ſhall be void, without Error, *&c.*

But now, by the *St.* 4 *&* 5 *An.* 16. All Grants and Conveyances thereafter to be made of any Manors or Rents by Fine or otherwiſe, or of the Reverſion or Remainder of any Meſſuages or Lands, ſhall be good and effectual to all Intents, without any Attornment of the Tenants of any ſuch Manors, or of the Lands out of which ſuch Rent was iſſuing, or of the Particular Tenant, upon whoſe Eſtate any ſuch Remainder, or Reverſion was dependant.

## (G. 1.) Proclamations, &c.

BY the *St.* 27 *Ed.* 1. *De Finibus levatis, Notæ & Fines in poſterum levandi publicè & ſolemniter legantur, & Placita interim ceſſant; & hoc fiat per duos dies in Septimana ſecundum diſcretionem Juſticiariorum.*

By the *St.* 4 *H.* 7. 24. A Fine ſhall be read and proclaimed in Court the ſame Term, and in 3 Terms next enſuing the ingroſſing, and in 4 ſeveral Days (but now, by the *St.* 31 *El.* 2. only in one Day) of the ſaid Terms, and the Pleas then to ceaſe.

And by the *St.* 1 *Mar.* 2. *Parl.* 7. If the Term be adjourned, a Fine ſhall be of as good Force, notwithſtanding the Neglect of Proclamations by Reaſon of ſuch Adjournment, as if the Term had been held from the Beginning to the End. 1 *Leo.* 84.

So, if Part of the Term be adjourned.

If the Conuſee dies before Proclamations, his Heir, if he pleaſes, may cauſe Proclamations to be made. *R. Cro. El.* 693.

A Fine without Proclamations makes a Diſcontinuance, but does not bar an Eſtate Tail.

So, a Fine in *Antient Demeſne*. *R. Lut.* 781. 1 *Sal.* 340. *Vide Ancient Demeſne*, (G. 2.)

So, if a Fine be determined or avoided before Proclamations paſſed, it ſhall be of no Effect, but as a Fine without Proclamations. *R.* 2 *And.* 109. *Pl. Com.* 437. *Vide Eſtates*, (B. 25.)

## (G. 2.) Ingroſſing.

An immaterial Variance in the Ingroſſment from the Caption, or Concord, ſignifies nothing: As, if the Words are of the ſame Import. *R. Cro. El.* 275.

So a Rent need not be mentioned in the Ingroſſment, if under 5*l.* tho' it be in the Writ and Caption. *R. Cro. El.* 275.

## (G. 3.) Inrolment, and Exemplification.

By the *St.* 23 *El.* 3. Every Writ of Covenant, and every Writ whereon a Fine ſhall be levied, and it's Return, the Writ of *Dedimus Poteſtatem*, and it's

*Vide Ante*, (E. 16.)

it's Return, the Concord, Note, and Foot of every Fine, the Proclamations thereon, and King's Silver, may be inrolled, &c.

The Juſtices of *C. B.* (excluſive of the *Ch. J.*) ſhall take care of the Inrolments, have an Office for that Purpoſe, and take 6*s.* 8*d.* for the Inrolment, and 5*s.* for the Exemplification of every Fine. *Sect.* 6.

By the *St.* 27 *El.* 9. The like Inrolment may be of Fines in *Wales*, and Counties Palatine.

## (H) A Fine, how avoided.

### (H. 1.) By Plea.

A Fine may be avoided by Plea, *quod Partes Finis nihil habuerunt.* *Vide Ante*, (E. 15.) for the form, see 2 Inst. 522.

And therefore, if a Fine be between *A.* and *B.* who were not ſeiſed of the Lands contained in the Fine at the Time of the Fine levied, a Stranger to the Fine may plead this Plea. 2 *Inſt.* 523.

So the Son and Heir of *A.* if he was ſeiſed at the Time of the Fine, may plead it: for he is a Stranger when he does not claim the Land under his Father, tho' he be Privy in Blood. 2 *Inſt.* 523. 3 *Co.* 89. *Hob.* 333.

So, in every Caſe, where the Heir does not claim his Eſtate from him to whom he is Heir: for *Hæres dicitur ab Hæreditate.* 3 *Co.* 88. *b.* 89. *a.*

As, if the Grandfather levies a Fine of the Land of *B*; his Son, being Heir alſo to *B.* may plead it, tho' he derives his Pedigree by the Grandfather. *Per* 2 *J. Jones Cont. Cro. Car.* 524, 543. *Jon.* 460.

So, if Tenant in Tail accepts a Fine, and thereby renders a Rent to the Conuſor; the Iſſue in Tail may plead in Avoidance of the Fine, *quod Partes Finis nihil habuerunt.* 3 *Co.* 89. *b.*

So, if the Tenant levies a Fine Executory; As, *Sur Conuſance de Droit tantum.* *Vide* 3 *Co.* 89. *b.*

So, if Tenant for Years levies a Fine, he in Reverſion may plead, *Quod Partes Finis nihil habuerunt.* 1 *Sal.* 241.

So, if Tenant in Tail dies, having a Daughter, and his Wife *privement enſeint* with a Son, and the Daughter levies a Fine; the Son born after may plead, *Partes Finis nihil, &c.* for he is a Stranger. *Hob.* 333.

The Form of Pleading is not only, *Quod Partes Finis nihil habuerunt*, but ought to alledge, that *A.* was ſeiſed at the Time of the Fine, under whom he claims. 2 *Inſt.* 523. *Lut.* 1623. *Vide Poſt*, (H. 2.)

Or, that he (or *A.* under whom he claims) was ſeiſed, *abſque hoc quod partes Finis aliquid habuerunt.*

Yet tho' Seiſin in *A.* be alledged, it is not traverſable; but the Iſſue ſhall be, whether the Parties to the Fine were ſeiſed. *Lut.* 1623.

And therefore, the Tenant or Defendant ſhall conclude to the Country, *Et de hoc ponit ſe ſuper Patriam.* 2 *Inſt.* 523. *Lut.* 1623.

But by the *St.* 27 *Ed.* 1. *de Finibus levatis* (which reſtored the Common Law) Parties and Privies to a Fine are ouſted of the Plea, *Quod Partes Finis, &c.* 2 *Inſt.* 522.

And therefore, if Tenant in Tail levies a Fine *Sur Conuſance de Droit come ceo, &c.* the Iſſue in Tail cannot ſay, *quod Partes Finis nihil habuerunt*: for he is Privy; for he claims as Heir, and by Deſcent. *R.* 3 *Co.* 89. *b.* 90. *a.* *R.* 1 *Leo.* 83. 1 *And.* 170. *Sav.* 88.

So, in no Caſe, where the Iſſue claims as Heir to the Tenant in Fee, or the Tenant in Tail, who levied the Fine. 1 *Leo.* 83.

So, if a Deviſe be, that his Executor ſhall ſell, who levies a Fine to *B.* and it be ſaid, *quod partes Finis nihil habuerunt*; the Vendee may aid himſelf by the ſpecial Matter: for he is in by the Will. 1 *Leo.* 31.

So, if the Iſſue in Tail takes Huſband, and they levy a Fine in the Life of the Anceſtor, and afterwards the Huſband dies, the Wife takes a 2d Huſband, and dies; the 2d Huſband ſhall not ſay, *Partes Finis nihil habuerunt*, to preſerve his Eſtate as Tenant by the Curteſy, tho' he was a Stranger to the Fine: for he claims by her who was a Party. 1 *Leo.* 82.

(H. 2.) How a Fine ſhall be pleaded.

A Fine ſhall not be pleaded, that *A.* levied a Fine, *&c.* but *quidam Finis ſe levavit, &c.* 2 *Inſt.* 511.

Or it may be, *Et fuit quædam finalis Concordia, &c.* 2 *Lev.* 31. *R. Pl. Com.* 431. *b.*

Neither is there any need to alledge, that *A.* who levied the Fine, was ſeiſed in Fee, or of any other Eſtate. *Semb. Lut.* 1622. 1 *Leo.* 255.

Or, if it be alledged, it is not traverſable. *R. Lut.* 1621. For it is but Form. *Sav.* 85.

Yet it is the moſt uſual Form to alledge it. *Lut.* 1621.

And in a Fine *Sur Conuſance de Droit tantum*, it ought to be alledged. *Lut.* 1622.

So it need not be alledged, before what Juſtices the Fine was acknowledged. *Pl. Com.* 105. *a.*

Or, that a *Feme Covert* was examined. *Pl. Com.* 105. *a.*

Or that the Party barred by it was of ſound Mind, of full Age, at large, *&c. Pl. Com.* 376. *a. R.* 1 *Leo.* 76. *Sav.* 85.

Or, that it was in *C. B.* For, *Coram Juſticiariis Domini Regis apud W.* is uſual, and well. *Pl. Com.* 431. *b.*

Or, that it was ingroſſed. *Semb. And. cont.* 1 *Leo.* 76, 7. *Sav.* 85.

So, if a Fine was acknowledged in *Hilary* Term, and recorded in *Eaſter*, it may be pleaded, *quidam Finis ſe levavit Termino S.ti Hilarii*: for it was a Fine before the ingroſſing. *Semb. Pl. Com.* 431. *b.* 1 *Sal.* 341.

Or it may be alledged ſpecially, as the Truth was. *Pl. Com.* 431. *b.* 1 *Leo.* 76.

Or, *quidam Finis ſe levavit Term. Hil. & poſtea Term. P. conceſſ' & recordat'. Bend. pl.* 141.

So it may be pleaded, *prout per Finem de Recordo hic remanen', &c.* without adding, *& per Proclam'.* 1 *Leo.* 77. *Sav.* 85.

So, *prout patet per Finem de Recordo, &c.* may be omitted. 1 *Leo.* 77. *Sav.* 85.

But it is not proper to plead a Fine of ſuch Land, *inter alia.* 1 *Leo.* 255.

## (H. 3.) By Writ of Error.

(H. 3.) What ſhall be Error.

So a Fine may be avoided by Writ of Error: As, if it be levied in *B. R.* or other Court of Record, which has not Power to hold Plea of it. 2 *Inſt.* 515. *Vide Ante*, (D.)

Or, without an Original Writ. 2 *Inſt.* 513. *Vide Ante*, (E. 1.)

So Error lies of a Fine in *B. R.* which *coram vobis reſidet. R.* 1 *Sal.* 337.

(H. 4.) By whom Error ſhall be ſued.

Error in a Fine ought to be ſued by ſome intitled to it. *Vide Pleader*, (3 B. 9.)

So, by a Privy in Eſtate, as by him in Reverſion, or Remainder, after an Eſtate Tail: for the Reverſion, or Remainder was diſcontinued by the Fine. *R.* 2 *Jon.* 182.

And if ſeveral Perſons join in a Fine; he only, who has a Prejudice by the Fine, and an Intereſt in the Land, ſhall have Error, without the others. *R.* 2 *Jon.* 182.

(H. 5.) How it ſhall be purſued.

If Error be in a Fine, a Writ ſhall be directed to the *Ch. J.* of *C. B.* to certify the Record and Proceſs of the Fine, another Writ to the *Cuſtos Brevium* to certify the Tranſcript of the Foot of the Fine, another Writ to the Chirographer to certify the Record and Proceſs of the Fine in his Cuſtody. *Weſt Symb.* 71.

And only the Tranſcript ſhall be removed. 1 *Sal.* 337, 341.

So there ought to be a *Scire facias* againſt the Terre-tenants: for tho' it is not by Law required of Neceſſity, yet it is requiſite by the Courſe of the Court. *R.* 1 *Sal.* 339, 598.

(H. 6) What is not Error in a Fine.

But by the *St.* 23 *El.* 3. No Fine ſhall be reverſed for falſe or incongruous Latin, Razure, Interlining, Miſ-Entry of any Warrant of Attorny or Proclamations, Miſ-Return, or Non-Return of the Sheriff, or other Want of Form, in Words, and not in Subſtance.

(H. 7.) Judgment for Reverſal, &c.

If a Fine appears to be erroneous, Judgment ſhall be for a Reverſal.

So *B. R.* may award a *Certiorari* to the Chirographer for the Fine itſelf, which ſhall be cancelled there. 1 *Sal.* 341.

So, if a Fine be levied by a Counterfeit Perſon, a *Vacat'* may be entred on the Roll. *Cro. El.* 531.

So it may be reverſed for Part. *R. Cro. El.* 469.

Or, againſt one Conuſor, and ſhall ſtand in Force againſt the other: As, if an Infant Tenant in Tail, and he in Remainder of full Age, join in a Fine; it may be reverſed as to the Infant only. 1 *Leo.* 115.

So, if Tenant in Tail and others join; it may be reverſed againſt the Tenant in Tail only, and as to the Land intailed. *R.* 2 *Jon.* 182.

So, if Huſband and Wife within Age levy a Fine; upon the ſpecial Matter, it may be reverſed as to the Wife only. *Semb.* 1 *Leo.* 115.

But, generally, it ſhall be reverſed for the Whole: For when Huſband and Wife join in a Fine, *primâ facie* it ſhall be intended the Inheritance of the Wife. *R.* 1 *Leo.* 115.

## By Claim.

When a Fine may be avoided by Claim, *Vide Claim*, (B. 1, &c.)

# (I) Who are barred by a Fine.

## (I. 1.) Parties and Privies.

A Fine is a final Bar to all Parties and Privies to the Fine. 2 *Inſt.* 516.

And therefore, if a Man levies a Fine; the Conuſor, and all who claim the Eſtate as Heir to him, are barred for ever. *R.* 2 *Co.* 55.

Tho' the Conuſor was Tenant in Tail, the Iſſue in Tail ſhall be barred. 19 *H.* 8. 7. *a.* *R. Dy.* 3. *a.* *R. Sav.* 88. *Vide Eſtates*, (B. 25.)

So a Privy, as an Heir by the Cuſtom, ſhall be barred: As, an Heir of Lands of the Nature of *Gavelkind*, or *Borough-Engliſh*. 2 *Inſt.* 516.

So, a Privy; tho' the Eſtate was in Contingency, and not veſted at the Time of the Fine. *R. Pol.* 66.

Or not commenced, if he afterwards ſurvives the Age at which his Eſtate commences. *R.* 3 *Leo.* 227.

So,

So, a Privy in Eſtate by Succeſſion: As, if an Abbot, Biſhop, *&c.* levy a Fine, his Succeſſor ſhall be barred. 2 *Inſt.* 516. *Cont. Pl. Com.* 375. *Acc.* 1 *Leo.* 84. *Vide Poſt*, (K. 4.)

So, if the Conuſor grants a Term for Years to *A.* in Truſt for himſelf, it ſhall be a Bar of the Truſt. 1 *Ch. R.* 50.

So a Fine *Sur Grant & Render* for Years, by a Tenant in Tail, ſhall be a Bar to the Iſſue in Tail. *Sav.* 106.

So, if *A.* enters into Land, deviſed to the Corporation of *London* for a Charity, and levies a Fine, and 5 Years paſs; the Corporation ſhall be barred, tho' it had no Notice of the Deviſe. *R. Jon.* 452.

But a Man ſhall not be barred as Privy, who does not claim the Eſtate as Heir to the Conuſor, tho' he was his Heir in Blood: And therefore, if the Uncle diſſeiſes the Father, and both die after a Fine levied by the Uncle; the Son ſhall not be barred, tho' he was Heir to the Uncle: for he claims as Heir to the Father, and not as Heir to the Uncle.

So he ſhall not be barred as Privy, who is only Privy in Eſtate: As, a Fine, by one Joint-tenant, of the Whole, does not bar his Companion as Privy. 2 *Inſt.* 516.

So a Fine by a Donee, or Leſſee, does not bar the Donor, or Leſſor. 2 *Inſt.* 516.

So a Fine by Tenant for Life does not bar his Heir, who has the Remainder in Tail. *Sav.* 128.

## (I. 2.) Strangers.

So a Fine bars not only Parties and Privies, and their Heirs, but all other People in the World, of full Age, *&c.* who do not make Claim, *&c.* *St.* 18 *Ed.* 1. *De Modo levandi Fines.* *St.* 27 *Ed.* 1. *De Finibus levatis.* *Pl. Com.* 357. (I. 2.) For what Intereſt.

And therefore, not only Eſtates of Inheritance, and Freehold, are barred by a Fine, but alſo Leaſes for Years. 2 *Inſt.* 517. *R.* 5 *Co.* 124.

The Eſtate of Tenant by Statute-Merchant, or Statute-Staple. 2 *Inſt.* 517. *R.* 5 *Co.* 124. *Sho.* 40. *Skin.* 262.

And of Tenant by *Elegit*. 1 *Mod.* 217.

If the Statute be extended, or an Inquiſition found, before Entry. 1 *Mod.* 217.

So, all Intereſts which are veſted, and *in Eſſe*: As, a Copyhold, or Cuſtomary Intereſt. *R.* 9 *Co.* 105. *Vide Copyhold*, (N.)

The Intereſt of an Executor, who has Land for Payment of Debts. 5 *Co.* 124.

If *Ceſtuy que Truſt* of a Term purchaſes the Inheritance, and levies a Fine, the Leſſees ſhall be barred. *R. Cro. Car.* 110. *R.* 1 *Sid.* 458. 1 *Vent.* 56, 81. 2 *Vent.* 329. 1 *Lev.* 270. *Carth.* 102.

So, the Intereſt of a Leſſee for Years before Entry. *R.* 5 *Co.* 124. 2 *Cro.* 60.

So, if a Leaſe be to commence *in futuro*, and a Fine paſſes, and then the Leaſe commences before the 5 Years paſs after the Fine, it ſhall be barred, if it be not claimed. *Per* 3 *J.* 2 *Cro.* 60.

So, the Eſtate of a Deviſee, if a Fine be levied by the Heir, before Entry. *R. Cro. Car.* 201.

So a Title to Dower is barred by a Fine of the Huſband, tho' it is not conſummate till the Death of the Huſband after the Fine. *Semb. Dy.* 224. *Dub. Pl. Com.* 373. *a.* *Acc.* 2 *Co.* 93. *a.* 10 *Co.* 49. *b.* 99. *a.* *R. Mo.* 53.

So, a Title to be Tenant by the Curteſy, by a Fine with his Wife. *Adm.* 5 *Mod.* 67.

So,

So, a Title of Entry for a Condition broken. *R. Cro. Car.* 577.

So, a Title of a Leſſee who never was in Poſſeſſion, but named as a Truſtee for the Wife of the Conuſor of the Fine. *R.* 1 *Ch. R.* 64.

So, if a Conveyance be obtained from *A.* by indirect Means; a Fine and Nonclaim afterwards ſhall be a Bar to Relief in Equity. *R. Jon.* 416.

So a Title to a Writ of Error ſhall be barred by a Fine, and Nonclaim for 5 Years. 2 *Inſt.* 518. *R. Mo.* 366.

And a Title to a Writ of Diſceit, by the Lord in *Antient Demeſne.* 2 *Inſt.* 518.

But this is underſtood of a ſubſequent Fine; and not of the ſame Fine intended to be avoided by the Writ of Error, or Diſceit. *R. Skin.* 13. *Ray.* 462. 2 *Jon.* 181. *Pl. Com.* 370. *b.* 1 *And.* 172.

So a Truſt ſhall be barred by a Fine: As, if a Deviſe be of Land charged with Portions, *&c.* and the Deviſee levies a Fine to *A. &c.* the Portions incurred after the Fine are barred. *R.* 2 *Ca. Ch.* 247. *R.* 1 *Ca. Ch.* 268, 278. If it be without Notice. 2 *Ca. Ch.* 125. *Eq. Abr.* 257.

So, an Equity of Redemption. *Per Hale, Hard.* 512. 2 *Ver.* 190. *Cont. Eq. Abr.* 257.

So, a Bill of Review. 2 *Ver.* 190.

(I. 3.) For what, not.

But an Intereſt not veſted ſhall not be barred by a Fine: As, if a Leaſe be made to commence *in futuro,* a Fine and 5 Years Nonclaim, before the Term commences, is not a Bar. *R.* 5 *Co.* 124. 2 *Cro.* 61. *Noy* 23. *Per Hale, Hard.* 413.

So, if a Statute be acknowledged, a Fine by the Conuſor of his Land, and 5 Years Nonclaim, does not bar, if the Statute was not extended. 1 *Mod.* 217.

Or, Judgment be ſuffered. *Ca. Ch.* 268.

Or, a Decree in *Chancery* be againſt him, who levied the Fine. *Ca. Ch.* 268.

So nothing ſhall be barred by a Fine and Nonclaim, which is not deveſted, and put to a Right. *R.* 9 *Co.* 106. *a.* 3 *Mod.* 196. *Ray.* 149.

And therefore, if a Leſſee for Years levies a Fine, and 5 Years paſs; the Leſſor ſhall not be barred: for his Eſtate was not deveſted, but *Partes finis nihil habuerunt. Hard.* 401.

If a Leaſe for Life be to *A.* Remainder to *B.* for Years, Remainder to *B.* in Fee; if *B.* levies a Fine, the Eſtate for Life of *A.* ſhall not be barred: for it was antecedent, and not deveſted. *Hard.* 402.

So, if a Man has a Rent, or Common, iſſuing out of Land, a Fine and Non-claim of the Land does not bar the Rent, Common, *&c.* for it was not deveſted. *Vide Pl. Com.* 435.

So a Fine by a Vendee of Tenant in Tail of the Gift of the King, the Reverſion being in the King, and Non-claim for 5 Years, does not bar the Iſſue in Tail. *Semb.* 1 *Sid.* 166. *Vide Eſtates,* (B. 31.)

So, if there be a Deviſe for Years for Payment of Debts and Legacies, Remainder to *B.* in Tail, who enters and pays ſeveral, and afterwards levies a Fine; this does not bar the Term. *Dub.* 3 *Mod.* 195. *Sho.* 73.

So, if a Fine be levied by Leſſee for Life, or Years, and he continues the Payment of the Rent, *&c.* it does not bar: for it would be fraudulent. *R.* 3 *Co.* 77, *Fermor.*

If a Mortgagor levies a Fine, and he continues in Poſſeſſion, and 5 Years paſs; the Mortgagee ſhall not be barred: for the Fine was fraudulent as to him. *Per Ch. J.* 1 *Vent.* 82. *Per Hale, Hard.* 402.

If *Ceſtuy que Truſt* of a Term purchaſes the Inheritance, and levies a Fine, and the Intent appears, that the Term ſhall be preſerved to protect the

Purchaſer; the Term is not barred. 1 *Vent.* 82. 1 *Sid.* 460. *Per Vent.* 2 *Vent.* 329. *Hard.* 401.

If *A.* conveys to *B.* and covenants to make further Aſſurance, and afterwards *B.* leaſes for Years to *A.* who makes Aſſurance by Fine; if the Intent appears, that the Term ſhall be preſerved, it is not deſtroyed by the Fine. *Hard.* 402.

If a Truſtee, or Mortgagee levies a Fine, the Truſt, or Equity of Redemption, ſhall not be barred. *Per Hale, Hard.* 512.

So a Truſt, or Equity, created by a Fine and the Uſes declared upon it, ſhall never be barred by the ſame Fine and Nonclaim. *R. Ca. Ch.* 278.

So a Fine and Nonclaim ſhall not be a Bar of an Equity, which does not directly charge the Land in the Fine, but only the Perſon in Reſpect of the Land. *R. Ca. Ch.* 278.

## (K) Who are not barred.

### (K. 1.) If they claim within 5 Years.

BY the *St.* 18 *Ed.* 1. *De modo levandi Fines*, All were barred by a Fine, if they did not put in their Claim within a Year and a Day; and this was the Common Law. 2 *Inſt.* 518.

But by the *St.* 34 *Ed.* 3. 16. Nonclaim upon a Fine was not a Bar.

Yet by the *St.* 4 *H.* 7. 24. A Fine, *&c.* ſhall conclude all, as well Privies as Strangers, *&c.* ſaving to every Perſon and Perſons and their Heirs, other than the Parties, ſuch Right, Claim, and Intereſt as they have to, or in the ſaid Lands, *&c.* at the Time of the Fine ingroſſed; ſo as they purſue the ſame by Action or Entry within 5 Years after the Proclamations made.

And therefore, every Stranger to a Fine, who has a preſent Right to the Land at the Time of the Fine levied, ſhall not be barred, if he purſues his Claim, by Action or Entry, within 5 Years after the Proclamations made upon the Fine.

But a Man, who has a preſent Right, ought to claim within 5 Years, otherwiſe he ſhall be barred; As, if a Leſſee for Years be ouſted, and his Leſſor diſſeiſed, and the Diſſeiſor levies a Fine; the Leſſor ought to claim within 5 Years: for he had a preſent Right. *R.* 9 *Co.* 105. *b*, *Podger*. *Vide Poſt*, (K. 2.)

So, if a Copyholder for Life, or Years be ouſted, and the Lord diſſeiſed, and the Diſſeiſor levies a Fine; the Lord ought to avoid it within 5 Years: for he has a preſent Right. 9 *Co.* 105. *b.*

If Tenant in Tail be diſſeiſed, and the Diſſeiſor levies a Fine, and 5 Years paſs; the Iſſue in Tail ſhall not have 5 Years after the Death of Tenant in Tail: for his Father had a preſent Right to the Entail. *Pl. Com.* 374. *a.*

### (K. 2.) Or within 5 Years after a new Right accrued.

So, by the *St.* 4 *H.* 7. 24. A Fine ſhall conclude, *&c.* Saving to all Perſons ſuch Action, Right, *&c.* as firſt ſhall grow, remain, or come to them after the ſaid Fine levied and Proclamations made, by Force of any Entail, or other Matter had before the ſaid Fine; ſo as they purſue their Action, Right, *&c.* within 5 Years next after ſuch Action, Right, *&c.* accrued.

And therefore, none who has a Right accrued after the Fine, for a Cauſe done before the Fine, ſhall be barred, if he claims within 5 Years after the new Right accrued.

As, if Tenant in Tail levies a Fine, and dies without Iſſue; he in Reverſion, or Remainder ſhall not be barred, if he claims within 5 Years after the Death without Iſſue.

If Tenant in Tail, by Bargain and Sale, Leaſe and Releaſe, *&c.* conveys to *B.* who levies a Fine; the Iſſue ſhall have 5 Years after the Death of Tenant in Tail. *R. Cro. El.* 896. *Noy* 46.

If Tenant in Tail diſcontinues, and the Diſcontinuee levies a Fine; the Iſſue in Tail ſhall have 5 Years after the Death of Tenant in Tail. *Dy.* 3. *b. Pl. Com.* 374. *a.* 3 *Co.* 87. *b.*

If a Mortgagee be diſſeiſed, and a Fine levied, and 5 Years paſs, and afterwards the Mortgagor pays the Money at the Day; he ſhall have 5 Years after the Money paid. *Pl. Com.* 373. *a.*

If a Huſband be diſſeiſed, and a Fine levied; the Wife ſhall have 5 Years after the Death of her Huſband, for her Dower. *Pl. Com.* 373. *a.*

If Tenant for Life, Remainder to *A.* in Fee, be diſſeiſed, and a Fine levied; he in Remainder ſhall have 5 Years after his Remainder commenced. *Pl. Com.* 373. *b.*

If a Perſon *Non-compos* enfeoffs *A.* who levies a Fine; the Heir ſhall have 5 Years after the Death of the Feoffor. *Pl. Com.* 374. *b.*

If a Son purchaſes, and dies, and his Siſter enters, and is diſſeiſed, and a Fine levied; a Brother born afterwards ſhall have 5 Years after his Birth. *Pl. Com.* 374. *b.*

If an Officer for Life levies a Fine of Lands appertaining to his Office; his Succeſſor ſhall have 5 Years after his Death. *Pl. Com.* 538. *b.*

So, if a Man has a preſent Right at the Time of a Fine, and afterwards a new Right accrues; he ſhall have 5 Years after the new Right accrued: As, if Tenant for Life levies a Fine, and afterwards dies; tho' the Leſſor had a Right at the Time of the Fine, for the Forfeiture, yet he ſhall have 5 Years after the Death of the Leſſee. *Per Dyer. Mo.* 71. *R. Cro. El.* 220, 254. *Cont. Pl. Com.* 373. *b. Agreed Cro. Car.* 157. *Dy.* 3. *b. in Marg. R. acc.* 1 *Lev.* 212.

So, if a Leſſee for Years makes a Feoffment, and the Feoffee levies a Fine; the Leſſor ſhall have 5 Years after the Expiration of the Term. *R.* 1 *Vent.* 241. *Ray.* 219. 2 *Lev.* 52. *Cont. Pl. Com.* 374. *a. Vide Ante,* (K. 1.)

So, if a Leſſee of a future Term dies, and the prior Term expires, then the Leſſor enters. and levies a Fine, and 5 Years paſs, and then *B.* takes Adminiſtration to the Leſſee; he ſhall have 5 Years afterwards: for no one had Title till Adminiſtration. *R.* 2 *Cro.* 60.

If *A.* Tenant *pur auter vie,* Remainder to *B.* for Life Remainder to *A.* in Fee, be diſſeiſed, and the Diſſeiſor levies a Fine, and 5 Years paſs, then *B.* dies; *A.* ſhall have other 5 Years for the Remainder in Fee. *Per* 4 *J.* 2 *cont. Pl. Com.* 367. *b.* 372. *b.*

If a Huſband diſcontinues Land of his Wife, upon a Condition, which is broken, and then 5 Years paſs after a Fine; the Iſſue, barred of Entry for the Condition broken, ſhall have other 5 Years after the Death of his Mother, for the Diſcontinuance. *Pl. Com.* 367. *b.*

If a Diſſeiſor takes to Wife the Diſſeiſee and is diſſeiſed, and a Fine levied; their Iſſue after 5 Years after the Fine, ſhall have other 5 Years after the Death of his Father, as Heir to the Diſſeiſee. *Pl. Com.* 367. *b.*

If a Statute be acknowledged to *A.* and afterwards another to *B.* and afterwards a Fine levied; if the Statute to *A.* be ſatisfied, *B.* ſhall have other 5 Years. *R. Skin.* 263, 4. *Vide infra.*

But a Man ſhall be barred, if he does not purſue his Claim within 5 Years after his Right accrued.

And if he, to whom the Right firſt accrues, does not purſue his Right within 5 Years; his Heir ſhall be barred.

So, if he to whom the Right firſt accrued, had only in Tail, and did not purſue within 5 Years; the Iſſue ſhall be barred. *R. Dy.* 3. *b.* *Pl. Com.* 374. *Acc. Cro. El.* 896. 3 *Co.* 87. *b.*

So, if he who has a Right dies within 5 Years, his Heir within Age, beyond Sea, *&c.* ſhall be barred, if he does not purſue within the firſt 5 Years: for, where the Time attaches in the Anceſtor, the Heir, tho' an Infant, *&c.* ſhall never have longer Time. *R. Pl. Com.* 375.

So, if *A.* makes a Leaſe for Years, Remainder after his Death, to *B.* for Years, and afterwards levies a Fine; admitting this to be a good Contingent Remainder, not deveſted by the Fine, yet if *B.* does not claim within 5 Years after the Death of *A.* he ſhall be barred. *R. Ray.* 151.

So a Man ſhall be barred, if he does not purſue his Right within 5 Years after the accruing, tho' he had not then a Right to the Poſſeſſion: As, if Tenant in Tenant in Tail makes a Leaſe purſuant to the *St.* 32 *H.* 8. and then levies a Fine, and dies without Iſſue, and afterwards the Leaſe expires; the Reverſioner ought to enter within 5 Years after the Death without Iſſue, and ſhall not have 5 Years after the Term expired: for he had not then a new Right. *R. Cro. Car.* 156.

If the Conuſee of a Statute purchaſes the Inheritance and levies a Fine, and then Satisfaction is acknowledged upon the Statute, a Conuſee of another Statute ſhall not have 5 Years after Satisfaction acknowledged: for he had not then any new Right. *R.* 2 *Vent.* 334. *Vide Skin.* 263, 4. *Vide ſupra.*

So, if the Impediment be removed only for a Month, or a Week, and afterwards a new Defect, or Impediment happens; the Fine ſhall be a Bar, if there be not a Claim within 5 Years after the firſt Removal of the Impediments. *Pl. Com.* 375. *a.*

So, Exceptions out of the *St.* 4 *H.* 7. ſhall not be taken by Equity. *Pl. Com.* 375. *a.*

## (K. 3.) If they be an Infant, *Feme Covert*, *&c.*

By the Common Law, and by the *St.* 18 *Ed.* 1. *De modo levandi Fines*, Infants, *Femes Covert* not examined upon the Fine, Perſons of unſound Memory, or in Priſon at the Time of the Fine, were not barred. *Pl. Com.* 359. *b.*

Nor Perſons out of the Realm.

So, by the *St.* 4 *H.* 7. 24. A Fine ſhall conclude, *&c.* all except *Femes Covert* not Parties, Perſons within Age, in Priſon, out of the Realm, or not of whole Mind at the Time of the Fine levied, ſo as they, or their Heirs, take their Action or Entry in 5 Years next after they be uncovert, come of Age, out of Priſon, into this Land, or of whole Mind.

And if the Perſon was Covert and not Party, within Age, in Priſon, out of the Realm, or not of whole Mind, when the Right firſt grew or came, *&c.* they ſhall have 5 Years after they become diſcovert, *&c.*

And if a Perſon has ſeveral Impediments; he ſhall have 5 Years after the laſt Impediment removed. 1 *Leo.* 215. *Pl. Com.* 375. *a.*

So, if a Perſon becomes Covert or under any other Impediment, before the laſt Proclamation; they ſhall have 5 Years after the Impediment removed, tho' they were not under it at the Time of the Fine levied. *Pl. Com.* 375. *a.*

So an Infant ſhall have 5 Years after full Age, tho' the Fine was levied when he was *en ventre ſa Mere.* *Pl. Com.* 366. *a.*

So,

So, if the Anceſtor was within Age, beyond Sea, &c. and died before full Age, or Return, his Heir ſhall have 5 Years after his Death. *R.* 1 *Leo.* 212. *Cro. El.* 220.

So, if an Heir, at the Death of his Anceſtor beyond Sea, &c. be within Age, &c. he ſhall have 5 Years after his full Age. 1 *Leo.* 212.

So, if a Huſband levies a Fine, and is outlawed for Treaſon, and dies, and afterwards the Outlawry is reverſed; the Wife ſhall have Dower 5 Years after the Outlawry reverſed, tho' ten Years be paſſed after the Death of the Huſband. *R. Mo.* 639.

## (K. 4.) If the Caſe be out of the Statute.

If an Infant dies during his Infancy, his Heir ſhall have Time to avoid the Fine for ever: for he was excepted out of the *St.* 4 *H.* 7. and was not within the Clauſe, which binds to claim within 5 Years after he comes to full Age; for he never was at full Age. *R.* 4 *Co.* 125. *b.* 2 *Inſt.* 519. *Semb. cont. Cro. Car.* 200.

So, if a *Feme Covert* at the Time of a Fine, a Man *Non ſane*, in Priſon, or out of the Realm, dies during the Coverture, Inſanity, Impriſonment, or Abſence out of the Realm; the Heir is not within the Act, but may avoid the Fine at any Time. 4 *Co.* 125. *b.* 2 *Inſt.* 519.—*Cont.* 1 *Le.* 212, for he ſhall have but 5 Years after the Impediment removed. 1 *Le.* 215.

So the Succeſſor of a Biſhop, Dean, Parſon, &c. ſhall not be bound by Nonclaim within 5 Years: for a Biſhop, Dean, Parſon, or other Eccleſiaſtical Sole Corporation, is not within the Purview of the Act. *Pl. Com.* 375. *b.* *Vide Ante*, (I. 1.)

So, if an Infant avoids a Fine within Age, and a Diſſeiſor afterwards enters, and enjoys for ten Years; it ſhall not be a Bar: for when he had avoided the Fine, it ſhall be void for ever. *Pl. Com.* 366. *a.*

And it may be avoided by an Infant within Age, as well as at full Age. 1 *Leo.* 212.

How a Claim ſhall be made to avoid a Fine, and by whom, *Vide Claim*, (B. 1, &c.)

## (L) How a Fine operates.

A Fine may enure to a Confirmation of a former Eſtate, which was defeazable before: As, if Tenant in Tail by Bargain and Sale, Leaſe and Releaſe, &c. conveys to *B.* in Fee, and afterwards levies a Fine to *B.* and his Heirs; this gives him a baſe Fee determinable upon his Death without Iſſue. *Vide* 1 *Sand.* 261.

So, if he levies a Fine to the Heir of the Bargainee. 1 *Sand.* 261.

So, if Tenant in Tail makes a Leaſe, &c. and afterwards levies a Fine to the Leſſee, or a Stranger; this enures to a Confirmation of the Leaſe. *Vide Eſtates*, (B. 25.)

So, if a Huſband, ſeiſed in Right of his Wife, makes a Leaſe not warranted by the *St.* 32 *H.* 8. and afterwards the Huſband and Wife levy a Fine to *B.* the Leaſe ſhall be confirmed, and the Leſſee ſhall hold during the Term. *Per Gawdy, Wray cont.* 4 *Leo.* 15.

But ſuch ſubſequent Fine has not Relation to affirm the firſt Eſtate *ab initio*. And therefore, if Tenant in Tail bargains and ſells Lands to *B.* and his Heirs, *B.* dies, and afterwards he levies a Fine to his Heir; this has not Relation to make a Deviſe of *B.* to be good. *R.* 1 *Sand.* 261.

So

So a Fine may enure by way of Extinguiſhment; And therefore, if Tenant in Tail makes a Leaſe, or other Eſtate, to *A.* and afterwards levies a Fine to *B.* the Leaſe, or other Eſtate, ſhall be indefeazable: for his Right during ſuch former Eſtate was extinct by the Fine. *R. Jon.* 60. 2 *Cro.* 689. *Vide Eſtates*, (B. 25.)

So, if the Iſſue in Tail levies a Fine, and before, or afterwards, the Tenant in Tail makes an Eſtate by Leaſe, or otherwiſe. *R. Jon.* 60.

So, if Tenant in Tail covenants to ſtand ſeiſed to the Uſe of himſelf for Years, and afterwards to his Son for Life, Remainder over, and then levies a Fine to a Stranger. *Dub.* 2 *Lev.* 84.

So, if a Diſſeiſee levies a Fine without declaring any Uſe, it enures to the Benefit of the Diſſeiſor. *R.* 2 *Co.* 56. *a.* *Adm.* 1 *Lev.* 128.

But if Tenant for Life be diſſeiſed, and afterwards he in Reverſion levies a Fine to *B.* this ſhall not enure to the Benefit of the Diſſeiſor, but to the Conuſor. *Semb. cont.* 2 *Co.* 56. *a.* *Acc. per* 2 *J. Cro. Car.* 484.

So, if a Diſſeiſee levies a Fine to *B.* and declares the Uſe to him; it does not enure to the Diſſeiſor. *Per Bridgm.* 1 *Lev.* 128.

*Vide* more concerning *Fine*, in *Amendment*, (N.)—*Baron and Feme*, (G. 1.)—*Chancery*, (3 N. 1, 2.)—*Enfant*, (B. 2.)—*Pleader*, (2 Y. 14.)

# FINES AND AMERCIAMENTS.

*Vide Chancery*, (3 K.)—*Chimin*, (C. 13.)—*Copyhold*, (H. 1, &c.—M. 4.)—*Leet*, (H.—N. 1, &c.—O. 1, &c.)—*Parliament*, (H. 8.)—*Prærogative*, (D. 51, &c.)—*Sewers*, (E. 7.)

# FIRST-FRUITS.

*Vide Tenths.*

# FISHING.

*Vide Juſtices of Peace*, (B. 44.)

# FLEET.

*Vide Chancery*, (B. 8.)—*Impriſonment*, (D.)

# FLOTSAN.

*Vide Wreck*, (A.)

# FOLDAGE.

*Vide Action upon the Caſe for a Diſturbance*, (A. 4.)

# FOLKMOTE.

*Vide Courts*, (O. 7.)

# FORBEARANCE.

*Vide Action upon the Caſe upon Aſſumpſit*, (B. 1.)

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# FORCEABLE ENTRY.

## (A) Forcible Entry.

### (A. 1.) How reſtrained.

BY the *St.* 5 *R.* 2. 8. None ſhall enter into Lands, *&c.* but when the Entry is legal; and then in peaceable Manner, and not with ſtrong Hand, or Multitude.

By the *St.* 15 *R.* 2. 2. On Complaint of Forcible Entry into Lands, Benefices, or Offices of holy Church, the Juſtices of Peace with the *Poſſe* of the County ſhall go to the Place, *&c.* and if they, or he, find any hold forcibly, ſhall commit them to the next Gaol, till, convict by Record of ſuch Juſtices, they make Fine and Ranſom.

And all of the County, and the Sheriff, ſhall aſſiſt, *&c.* on Pain of Fine and Ranſom.

By the *St.* 8 *H.* 6. 9. On Complaint of Forcible Entry, or Detainer, the Juſtices of the County, or Mayor or Juſtice in a Corporation, at the Coſts of the Party, ſhall cauſe theſe Statutes to be executed.

And whether the Perſons be preſent, or gone, ſhall inquire, *&c.* of ſuch Forcible Entry, or Detainer.

So, by the *St.* 21 *Jac.* 1. 15. The Juſtices ſhall give the ſame Remedy for Forcible Entry, or Detainer, on a Term for Years, Copyhold, Land held by *Elegit*, Statute-Merchant, or Staple, or Guardian in *Chivalry*, as on Freehold.

And theſe Statutes extend, where the Entry, or Detainer is with Force. *F. N. B.* 248. *C.*

So, if the Entry, and alſo the Detainer, be forcible; tho' the Statute ſpeaks in the Disjunctive. *F. N. B.* 248. *D.* 19 *H.* 6. 32. *a.* *R. Mar.* 6.

### (A. 2.) What ſhall be.

Forcible Entry is, when a Man enters into Lands or Tenements *manu fortì*: As, if he brings unuſual Weapons. *Co. L.* 257. *b.* *H. P. C.* 138.

Or threatens Violence. *Co. L.* 257. *b.* *H. P. C.* 138.

Or breaks the Door of the Houſe, being lockt. *H.* 138.

Or ejects the Poſſeſſor with Violence. *H.* 138.

So, if he enters into a Church with Force. *R.* 1 *Sid.* 101. 1 *Lev.* 90. And

And one alone may make a Forcible Entry. *H.* 138.

Tho' it be an Infant, or *Feme Covert*. *Vide Cromp.* 69. *a. b.*

So, if one alone uſes Force, all in Company are guilty. *Co. L.* 257. *b.*

If he breaks the Door, and enters, tho' no Body be within the Houſe. *R.* 2 *Rol.* 2.

So it ſhall be a Forcible Entry, if it be attempted with Force, tho' obtained by Intreaty.

If he enters by Force, tho' he does not eject the Owner, nor continue in Poſſeſſion.

If he enters by Force to make a Diſtreſs for Rent due. *Vide Cromp.* 69. *b.*

Or to take Graſs, Corn, *&c.* *Vide Dalt. c.* 126. *Cromp.* 68.

If he be accompanied, or weaponed, in ſuch a Manner, that People may dread Force, tho' he does not uſe Force.

So it ſhall be a Forcible Entry, if he enters with a Multitude. *H. P. C.* 138.

The Number of 10 makes a Multitude: But what ſhall be ſo, lies in the Diſcretion of the Juſtices. *Co. L.* 257. *a.*

If a Maſter enters with an unuſual Number of Servants. *Co. L.* 257. *b.*

### (A. 3.) What not.

But it ſhall not be a Forcible Entry, if there be not an actual Entry.

So, if he does not enter forcibly; As, if he opens the Door with a Key. 2 *Rol.* 2.

Or enters by an open Window. 2 *Rol.* 2.

Or, if the Entry be without Semblance of Force; as, if a Man comes in a peaceable Manner, and intices the Owner out of Poſſeſſion.

Tho' he afterwards opens the Door, being only latched, and enters. *H. P. C.* 138.

Or, afterwards excludes the Owner, by Shutting the Door, without other Force.

Or, if he takes the Owner, and impriſons him, and then ſends his Servant peaceably to make Entry; this is falſe Impriſonment, but not Forcible Entry.

Or if, after Entry, he cuts Corn, Graſs, *&c.*

Or, if the Entry be forcible, but not with Intent to do Wrong there; As, if a Man goes croſs the Land with Force, or a great Company, to Church, or Market.

So, if a Man enters an Houſe to apprehend a Felon, *&c.*

Or, an Officer with Force enters to do Execution.

Or, by Warrant of Law.

## (B) Forcible Detainer.

### (B. 1.) What ſhall be.

FORCIBLE Detainer is, when a Man, who enters peaceably, afterwards detains his Poſſeſſion by Force: As, if he threatens a corporal Damage to him who attempts to enter. *H. P. C.* 139.

If he repels him with Violence.

Or continues the Door ſhut, when the Juſtices demand Entrance. *H. P. C.* 139.

If

If he brings more Arms than his Family uſually has. *H. P. C.* 139.

Or more Perſons than his uſual Family. *H.* 139.

Or the Juſtices find unuſual Arms or Company there.

If he lodges Arms or Men at a neighbouring Place. *H. P. C.* 139.

If at the End of his Term, he keeps Drums, Guns, Halberts, to oppoſe the Entry of the Leſſor; tho' no one attempts an Entry. *R.* 2 *Cro.* 199.

So it ſhall be a Forcible Detainer, if a Leſſee at Will detains with Force, after the Will is determined. *Vide Cromp.* 70. *b.*

Or a Mortgagor, after the Mortgage is forfeited. *Vide Dalt. c.* 126.

Or a Feoffee of a Diſſeiſor, after Entry or Claim by the Diſſeiſee. *Vide Cromp.* 69. *b.*

So, if a Leſſee, with Force, reſiſts a Diſtreſs for Rent. *Vide Cromp.* 69. *b.* 70.

Or foreſtalls, or reſcues the Diſtreſs. *Vide Cromp.* 69. *b.*

### (B. 2.) What not.

But it is not a Forcible Detainer, if a Leſſee at Will, after the Determination of the Will, denies Poſſeſſion to the Leſſor, when he demands it. *Vide Cromp.* 70. *b.*

Or ſhuts the Door againſt the Leſſor when he would enter. *Vide Cromp.* 70. *b.*

So it is not a Forcible Detainer, if he keeps out a Commoner, by Force, upon his own Land. *Cro. Car.* 486.

So, by the *St.* 8 *H.* 6. 9. Any in Poſſeſſion 3 Years, by himſelf, or any under whom he claims, may detain with Force.

And by the *St.* 31 *El.* 11. No Reſtitution ſhall be given on an Indictment of Forcible Entry, or Detainer, where the Party hath been 3 Years in quiet Poſſeſſion before the Indictment found, and his Eſtate not determined.

But if *A.* was in quiet Poſſeſſion 3 Years, and then diſſeiſed by Force, and reſtored; he cannot afterwards detain with Force within 3 Years after his Reſtitution: for his Poſſeſſion was interrupted. *R. Dy.* 141, 2.

## (C) Remedy, by Action.

AN Action lies upon *St.* 15 *R.* 2. 2. againſt him who makes a Forcible Entry.

So, upon *St.* 8 *H.* 6. 9. againſt him who makes a Forcible Entry, or Detainer.

*Vide Pleader*, (2 S. 20.)

## (D) Remedy, by Juſtices of Peace.

### (D. 1.) Upon View.

SO, by the *St.* 15 *R.* 2. 2. A Juſtice of Peace may go to the Place, &c. and if he find any hold forcibly, ſhall commit, &c. till, convict by Record of the Juſtice, they make Fine and Ranſom.

And therefore, any Juſtice of the Peace, upon View of the Force, may make a Record of it, and commit the Offender. *Vide Dalt. c.* 44.

And this, without a Writ directed to him to execute the Statutes.

And, upon any Information, without a Complaint of the Party.

So

So every Juſtice may take the Sheriff, and *Poſſe Comitatûs*, to reſtrain the Force. *Vide Dalt. c.* 44.

He may break open a Houſe to remove the Force. *Vide Dalt. c.* 44.

The Record made a Juſtice upon View, ſhall be a Conviction, and is not traverſable. *Vide* 8 *Co.* 121. *Dalt. c.* 44.

And ought to be certified to *B. R.* or the next Aſſiſes, or Quarter-Seſſions. *Vide Dalt. c.* 44.

And the Party convicted ſhall be there fined. *Vide Dalt. c.* 44.

But the Juſtice himſelf cannot fine. *Dub. Dalt. c.* 44. *Vide Sal.* 353.

And if a Defect appears, in the Conviction, to *B. R.* it ſhall be quaſhed. 1 *Sid.* 156.

## (D. 2.) By Inquiſition.

So, by the *St.* 8 *H.* 6. 9. A Juſtice of Peace, whether the Perſons be preſent or gone, ſhall inquire of ſuch Forcible Entry, or Detainer: And on ſuch Inquiry ſhall direct Warrants to the Sheriff, to ſummon indifferent Perſons, near the Lands, having 40*s. per Ann.* to inquire, *&c.*

And ſhall return 20*s.* the firſt Day on each ſummoned, 40*s.* the next Day, and 5*l.* the next, and ſo double; on Pain of 20*l.*

And therefore, every Juſtice of Peace may make Inquiſition upon a Forcible Entry, or Detainer.

## (D. 3.) By Indictment.

So an Indictment may be for a Forcible Entry, or Detainer, before Juſtices of Peace of the County where the Land lies, at the Quarter-Seſſions.

But an Indictment for a Forcible Detainer, ought to ſhew, that the Entry was peaceable. *R.* 2 *Cro.* 151. *Vide Poſt*, (D. 4.) *Cont.*

## (D. 4.) What ſhall be a good one. *Vide Indictment*, (G. 1, &c.)

The Indictment ought to be certain: and therefore, it ought to ſhew the Certainty of the Houſe or Land where the Entry was: for, if it ſays, *in unum Tenementum*, it ſhall be quaſhed. 2 *Rol.* 46.

So it ought to ſhew, what Eſtate he had in the Land where the Entry was made: As, before the *St.* 21 *Jac.* it ought to ſhew that he had a Freehold.

And ſince, it ought to ſay, what Eſtate he has: for perhaps he is only Tenant at Will. *Semb.* 1 *Sal.* 260. *R.* 1 *Sid.* 102.

And tho' it afterwards ſays, *quod diſſeiſivit*, it is not ſufficient: for that is only an Implication of a Freehold. *R.* 1 *Vent.* 306.

So, *Poſſeſſionatus pro Termino*, is not ſufficient, without ſaying, for Life, or for Years. 1 *Vent.* 306.

So it ought to ſay, *adtunc exiſten'* his Eſtate: for, *at the Time of the Indictment*, is not ſufficient. *R.* 2 *Cro.* 214, 639.

And, *adtunc & adhuc exiſten'*, *&c.* will be repugnant. *Sho.* 272.

So it ought to alledge an expreſs Expulſion: for it is not ſufficient to ſay, *quod intravit, & eum diſſeiſitum & expulſum extratenuit*; but it ought poſitively to ſay, *quod fuit diſſeiſitus. R.* 1 *Sal.* 260.

An Indictment for a Forcible Entry may be quaſhed upon Motion, before a Fine is ſet; not afterwards, without a Writ of Error. *Sal.* 450.

But an Indictment for a Forcible Detainer ſhall be good, tho' it does not ſhew, whether the Entry was by Force, or peaceably: for Certainty is only neceſſary in the Point charged; and if it is not ſaid, by Force, it ſhall not be intended. *Dub.* 2 *Cro.* 20. *Vide Ante*, (D. 3.) *Cont.*

So an Indictment for a Forcible Entry is good, tho' it ſays, *adhuc detinet*, without ſhewing, that it was *contra Pacem*: for perhaps the Detainer was without Force. *R.* 2 *Cro.* 32.

So it is ſufficient to ſay, *diſſeiſivit*, without adding, & *expulit*. *R.* 2 *Cro.* 32. *Quod fuit poſſeſſionatus pro Termino Annorum*, without ſaying, how many Years. 1 *Vent.* 306.

## (D. 5.) When Reſtitution ſhall be made.

By the *St.* 8 *H.* 6. 9. A Juſtice of Peace, if on Inquiry, &c. a Forcible Entry or Detainer is found, ſhall put the Party in Poſſeſſion of the Lands ſo entred or holden.

And the Juſtice ſhall make Reſtitution, after Inquiſition found, to the Party ouſted, by himſelf, or by his Precept to the Sheriff. *Per* 2 *J. Ray.* 85. *Carth.* 496.

So Reſtitution ſhall be made upon an Indictment at the Quarter-Seſſions. *H. P. C.* 140.

So *B. R.* ſhall make it by a Writ to the Sheriff, if the Indictment be removed into Court by a *Certiorari*, or Certificate of the Juſtice. *H. P. C.* 140. *Vide Dalt. c.* 131.

So, Juſtices of Gaol-Delivery, upon an Indictment before them. *Sav.* 68.

So Re-Reſtitution ſhall be, where the Indictment is quaſhed. *Sav.* 68. 2 *Cro.* 151.

So Reſtitution ſhall be to a Diſſeiſor ouſted by the Force of the Diſſeiſee. *Vide Dalt. c.* 132.

To a Leſſee, tho' the Leſſor, who was diſſeiſed, thereby oppoſes it. *Vide Dalt. c.* 132.

To a Copyholder, tho' his Lord oppoſes it. *Vide Dalt. c.* 132. *Cont. before the St.* 21 *Jac.* 15. *Dy.* 142. *a. in Marg.*

(D. 6.) How made. A Juſtice of Peace, or Sheriff ſhall break open a Houſe to make Reſtitution.

## (D. 7.) When not.

But no Writ of Reſtitution ſhall be awarded, where the Party has Poſſeſſion. *Mar. pl.* 12.

Nor, to an Advowſon, Common, Rent, &c. for it ſhall only be to Land. *Vide Dalt. c.* 44.

Nor, where he, who uſed Force has the Poſſeſſion by Operation of Law: As, if a Diſſeiſee enters, and afterwards, by Force, ouſts his Diſſeiſor; the Poſſeſſion ſhall not be reſtored: for it was reveſted in the Diſſeiſee by his Entry. *Vide Dalt. c.* 132.

Nor, if a Leſſor enters by Force upon the Leſſee, for a Forfeiture. *Sal.* 587.

Nor, to any other than him who was ouſted by Force: As, to his Heir. *Vide Dalt. c.* 132.

Or any Abator, after the Death of the Anceſtor. *Vide Dalt. c.* 132.

Nor, if the Party tenders a Traverſe to the Inquiſition, 1 *Sid.* 287. It ſhall be ſtayed, or granted at Diſcretion, *H. P. C.* 141. It ſhall be ſtayed, *Sal.* 260. *Vide Sal.* 588. *Semb.* that it ſhall be ſtayed.

But it is ſaid, that it ſhall be granted, *Mod. Ca.* 115.

So, upon a *Certiorari* delivered to remove an Indictment, it ſhall be ſtayed. *H. P. C.* 141.

Or, if the Indictment appears inſufficient. *H. P. C.* 140.

And in ſuch Caſe, Reſtitution granted may be ſtayed before Execution. *H. P. C.* 140.

So Reſtitution ſhall not be, after a Conviction by a Juſtice upon his View. 1 *Vent.* 308.

Nor, by Juſtices of Aſſiſe, Gaol-Delivery, or Juſtices of Peace; if the Indictment was not found before them. *H. P. C.* 140. *Vide Dalt. c.* 44, 131.

So Reſtitution ſhall not be, unleſs immediately; not 4 or 5 Years afterwards. *R. Carth.* 496.

Nor, by *St.* 31 *El.* 11. If by Plea it appears, that the Party had Poſſeſſion for 3 Years before the Inquiſition found. *R. Ray.* 85. *Sal.* 260.

Tho' the Plea does not ſhew, how he was poſſeſſed. *R. Ray.* 85. 1 *Sid.* 149.

## (D. 8.) Suppreſſion of Riots.

(D. 8.) What ſhall be a Riot.

A Riot is, when 3 or more aſſemble, and do an unlawful Act. *H. P. C.* 137. *Vide* 3 *Inſt.* 176.

As, if they make a Battery upon another. 3 *Inſt.* 176.

Hunt in his Park, Chaſe, Warren, *&c.* 3 *Inſt.* 176.

Enter upon his Poſſeſſion, or deſtroy his Corn, Herbs, Goods, *&c.* 3 *Inſt.* 176.

So if 3 or more aſſemble to do a lawful Act in an unlawful Manner: As, to abate a Nuſance, and they do it with Threats, and boiſterous Behaviour. *Vide Dalt. c.* 137.

To ride to Market, *&c.* and they do it in Harneſs, *&c.* *Vide Dalt. c.* 138.

If a Man, upon Menaces made to him, aſſembles a Company to go with him for his Defence. *Vide Dalt. c.* 137.

If he enters Land to which he has Title, with Numbers, and in a forcible Manner. *Vide Dalt. c.* 138.

If he rides *Skimmington* in a tumultuous Manner. *R.* 3 *Keb.* 579.

If an Aſſembly be upon an unlawful Occaſion, and he who comes upon a lawful Cauſe, joins in an Affray which happens, he may be a Rioter. *Mod. Ca.* 43. For where the Aſſembly was unlawful, the Act of one ſhall be imputed to all. *Per Holt, Sal.* 595.

So, if in a Journey, the Company beat a Stranger riding on the Road, it will be a Riot in all who act: for when the Quarrel began, it began to be an unlawful Aſſembly. *R. Sal.* 595.

(D. 9.) What a Rout.

A Rout (from the *German* word *Rot*) is, when they aſſemble for an unlawful Deſign, and move in it, but do not execute it. *Vide Dalt. c.* 136.

(D. 10.) What an unlawful Aſſembly.

An unlawful Aſſembly is, when 3 or more aſſemble to do an unlawful Act, but do nothing. *H. P. C.* 137.

(D. 11.) What not.

But it will not be a Riot, if 3 or more aſſemble to do a lawful Act, and they do it in a lawful Manner: As, to remove a Nuſance. *Vide Dalt. c.* 137.

Or, to defend a Man in his Houſe againſt Violence. *Vide Dalt. c.* 137.

So, if the Servants of the Owner of a Houſe enter by Force, by Command of their Maſter, when the Servants of him, who has the Cuſtody of the Houſe, oppoſe them. *R. Mo.* 787.

So, if they aſſemble to do an Act which ſeems lawful; As, to remove Timber to which they claim Title. *Vide Dalt. c.* 137.

So, if divers, *Clamore riotoſé*, prevent an Election of Officers in a Borough; it is not a Riot, if the Right of Election be not ſhewn: for, to make a Riot, there ought to be an unlawful Act, and an unlawful Aſſembly. *R. Sal.* 594.

If

If they break the Door of the *Guildhall*, if it is not ſhewn whoſe Houſe it was; for perhaps it belonged to the Defendants. *R. Sal.* 594.

So, if divers aſſemble peaceably, upon a lawful Occaſion, it will not be a Riot, tho' a ſudden Affray happens. *Mod. Ca.* 43. *R. Sal.* 595.

So, if a Man, accompanied with his Servants, does an Outrage; it is not a Riot in the Servants, who did not intend Miſchief: for none ſhall be a Rioter, except him who acts, when the Aſſembly was not with a bad Intent. *Sal.* 595.

Tho' he had more Servants than he uſually had. *Vide Dalt. c.* 136.

If a Jury, or *Poſſe Comitatûs*, quarrel among themſelves. *Vide Dalt. c.* 136.

If Travellers quarrel, and beat one of the Company.

So it is not a Riot, if ſeveral aſſemble at an Alehouſe in Friendſhip; tho' they ought not to do it. *Vide Dalt. c.* 136.

Or, for Sport; As, for Football, Bull-baiting, Bear-baiting, *&c.* *Vide Dalt. c.* 136.

Or, for Dancing, Bowls, Cards, Dice, *&c.* tho' they are not lawful Games. *Vide Dalt.* 136.

So, if 3 are indicted for a Riot, and one only found *Not guilty*, all ought to be diſcharged. *R. Sal.* 593.

Tho' the others made a Battery, they ſhall not be puniſhed for it: for the Offence charged was a Riot. *Sal.* 594.

(D. 12.) How ſuppreſſed. By one Juſtice of Peace. *Vide Juſtices of Peace*, (B. 9.)

By the *St.* 34 *Ed.* 3. 1. Juſtices of Peace ſhall have Power to reſtrain all evil Doers, Rioters, *&c.* and to arreſt, purſue, and puniſh them according to Law.

And therefore, if there be a Riot, Rout, or Unlawful Aſſembly, every Juſtice of Peace may require the Offender to find Sureties for the Peace, or good Behaviour, and commit him upon Refuſal. *Vide Dalt. c.* 82.

Or may order another to arreſt him. *Vide Dalt. c.* 82.

(D. 13.) By more Juſtices. *Vide Juſtices of Peace*, (B. 9.)

So, by the *St.* 13 *H.* 4. 7. If a Riot be made, Juſtices of Peace, or 2 of them, with the Sheriff, Under-ſheriff, and *Poſſe*, if need be, ſhall arreſt them, and record what they find done in their Preſence; by which they ſhall be convict, as in Forcible Entry.

Any 2 Juſtices in the County may make the Conviction, tho' the 2 next Juſtices only are bound to do it. *Vide Dalt. c.* 82.

(D. 14.) When upon View.

The Juſtices of Peace, for Execution of the *St.* 13 *H.* 4. 7. ought to go to the Place where the Riot is made, with the Sheriff, *&c.* for the Sheriff ought to join throughout the whole Proceeding. *R. Ray.* 386.

And the Juſtices, with the Sheriff, may arreſt all preſent, and take their Arms. *Vide Dalt. c.* 82.

Tho' they came without Intent to do Miſchief. *Vide Dalt. c.* 82.

And all riotouſly arrayed, whom they ſee in their Way to the Place, or back again. *Vide Dalt. c.* 82.

And may make freſh Suit after any who eſcape. *Vide Dalt. c.* 82.

Or ſend a Warrant for them to find Surety, *&c.* *Vide Dalt. c.* 82.

So the Juſtices, with the Sheriff, ought to make a Record of every Thing unlawful done in their Preſence. *Kel.* 41. *a.*

And fine and impriſon the Offenders. *Vide Dalt. c.* 82.

And the Sheriff ought to be a Party to the Record, if the Conviction be before the Rioters diſperſe. *R. Sal.* 593.

And ought to join in ſetting the Fine upon the Offender. *R. Ray.* 386.

The Record ought to ſhew all the Circumſtances of the Fact in certain. It

It ought to ſhew the Conviction to be upon View. *R. Ray.* 386.

It ought to make the Conviction in the preſent, not the perfect Tenſe. 2 *Mod. Ca.* 65.

The Fine ſhall be upon each Offender ſeverally. *Vide Dalt. c.* 82.

And Commitment ſhall be immediately upon Conviction. *Kel.* 41. *a.*

After the Record made upon View, it ſhall be certified to *B. R.* Aſſiſes, or Seſſions. *Vide Dalt. c.* 82.

And is not traverſable. *Vide Dalt. c.* 82.

But Juſtices of Peace cannot deliver Poſſeſſion; for they can do nothing but puniſh and record the Force. *R* 1 *Sid.* 156.

And if they do, *B. R.* will make Reſtitution. 1 *Sid.* 156.

So, if Juſtices of Peace proceed wrongfully, an Information will go againſt them. *R.* 1 *Sid.* 156.

And their Conviction, if it appears to be bad, may be quaſhed upon Motion, without a Writ of Error. *R.* 1 *Sid.* 156.

(D. 15.) By Inquiſition.

By the *St.* 13 *H.* 4. 7. If a Riot be, *&c.* And the Offenders be departed before the Juſtices come, they ſhall inquire of ſuch Riot within a Month, and hear and determine it.

And the Juſtices may inquire without the Sheriff, where the Rioters are diſperſed. *R. Sal.* 593.

So they may inquire after the Month: for they are only ſubject to a Penalty, if they do it not in that Time. *R. Sal.* 593.

An Inquiſition is ſufficient, if it ſays, *pro Domino Rege*, without ſaying, *pro Domino Rege, & Corpore Comitatûs*, as an Inquiſition taken by a Grand Inqueſt. *R. Sal.* 593.

*Vide* more of this, in *Juſtices of Peace*, (B. 10.)

(D. 16.) By Surety of the Peace. How granted. Upon a *Supplicavit.*

So a Riot, or Breach of the Peace may be reſtrained, or prevented by Sureties found for the Peace.

If it appears to the *Chancery*, upon Complaint, that any one has Cauſe to pray Sureties for the Peace againſt another, a *Supplicavit*, ſhall be directed to any Juſtice of Peace, or to the Juſtices in general, or to the Juſtices and Sheriff, to take of him ſuch Sureties, or commit him to Priſon. *F. N. B.* 80. *Reg.* 88. *Vide Chancery*, (4 R.)

So a *Supplicavit* lies from *B. R.* 1 *Keb.* 203, 290. *Mo.* 43.

And the Sheriff may break open a Houſe upon a *Capias* to find Sureties for good Behaviour. *R. Mo.* 606.

If Articles are ſworn in *Chancery*, upon which a *Suplicavit* is granted, and by *Habeas Corpus* the Party being brought to a Judge of *B. R.* is bound to appear in *B. R.* If the Articles are tranſmitted from the *Chancery* to *B. R.* or the Witneſſes appear, and charge him there; he ſhall be bound in *B. R.* otherwiſe not. *Skin.* 61.

A *Supplicavit* ſhall not be granted, but upon *Affidavit*, that it is not prayed of Malice. *F. N. B.* 79. *H.*

And if it be for good Behaviour alſo; Articles ought to be exhibited. *R.* 2 *Keb.* 305. 1 *Sid.* 67. 1 *Lev.* 53.

It may be granted upon Menace of corporal Damage. *Reg.* 88. *F. N. B.* 79. *G.*

Or Menance of burning his Houſe. *Reg.* 88. *F. N. B.* 79. *G.*

For going, or riding armed. 1 *Keb.* 203.

Diſturbance of Divine Service, and carrying the Miniſter to Priſon. *R.* 1 *Keb.* 290.

For Dread of Damage to him and his Men, by ſuch as have Diſcord whit him. *Reg.* 89. *a.*

(D. 17.) How it ſhall be excuted.

The Juſtice executes a *Supplicavit* as Miniſter: and therefore ought to purſue his Writ ſtrictly.

And the Juſtices themſelves to whom it is directed, or one of them, ought to execute it: for he cannot depute another. 2 *Rol.* 348.

Or, the Party, or his Friends for him, ſhall give Surety in *Chancery*, and have a *Superſedeas* to the *Supplicavit*. *F. N. B.* 81. *A.*

Or in *B. R.* when the *Supplicavit* goes from thence. *R. Mo.* 43.

So, upon a Certificate of the Juſtices to whom directed, that the Party who demands it is contentious, and the other of good Fame, a *Superſedeas* is uſually granted.

After Surety taken by Recognizance for the Peace, the Juſtices ought to return the Writ and Recognizance. *Lamb.* 110. *Vide Dalt. c.* 122.

If Surety be given only for one of thoſe againſt whom a *Supplicavit* is granted; it ought to be returned, that the other *Non eſt inventus*. 2 *Rol.* 348.

Or, that he who demands it releaſed to him. *Lamb.* 111.

If the Juſtice does not return the Writ or Recognizance, a *Certiorari* lies for them. *F. N. B.* 81. *B.*

Tho' the Writ was not returnable in *Chancery*. *F. N. B.* 81.

(D. 18.) Upon a Warrant of a Juſtice of Peace. How it ſhall be made.

So a Juſtice of Peace, by Warrant, may bring any before him, upon good Cauſe, to find Surety for the Peace. *Vide Dalt. c.* 118.

Or may demand Surety of any preſent, by *Parol*. *Vide Dalt. c.* 118.

Or, command another, by *Parol*, to arreſt him being preſent, to find Surety. *Vide Dalt. c.* 118.

A Warrant by a Juſtice of Peace, to bring any before him to find Surety for the Peace, may be directed to the Sheriff, to a Conſtable, or other Officer, or to a Stranger. *Vide Dalt. c.* 118.

It ought to be under his Hand and Seal, and to contain the Cauſe. *Vide Impriſonment*, (H. 6, &c.) *Vide Dalt. c.* 118.

But a Juſtice of Peace cannot injoin another, that he ſhall keep the Peace, under a Penalty.

(D. 19.) How executed.

If a Warrant be directed to the Sheriff, he may by *Parol*, or Precept, command any known Officer to execute it. *Vide Dalt. c.* 169.

So, by Precept, he may command any, who is not a known Officer. *Vide Dalt. c.* 169.

But if it be directed to a Conſtable, or a Stranger, he ought to execute it himſelf: for he cannot make a Deputy. *Vide Dalt. c.* 169.

If it be directed to 2 or more, either of them may execute it. *Vide Dalt. c.* 169.

The Officer ought to require him to find Surety, before he arreſts him. *Vide Execution*, (C. 12.) *Vide Dalt. c.* 118.

He ought to inform him at whoſe Suit, and for what, it is demanded. *R.* 6 *Co.* 54. *a.*

And if he be not an Officer known and ſworn, he ought to ſhew his Warrant. *Vide Dalt. c.* 169.

Otherwiſe, if he be an Officer known and ſworn. *Vide Dalt. c.* 169.

The Officer, for executing his Warrant, may take the *Poſſe Comitatûs*. *Vide Dalt. c.* 172.

And break open a Houſe, if neceſſary. *Vide Dalt. c.* 127, 169.

And juſtify a Battery of the Perſon, if he reſiſts.

If a Perſon be taken upon the Warrant, the Officer may commit him, without other Warrant, if he refuſes to come before a Juſtice, or to find Surety there. *R.* 5 *Co.* 59. *b.*

So the Juſtice may commit him if he does not find, or does not offer Surety. *Vide Dalt. c.* 171.

And where the Warrant is general, the Officer may bring him to what Juſtice he pleaſes. *Vide Dalt. c.* 169. 5 *Co.* 59. *b.*

(D. 20.) A Recognizance for the Peace. How taken.

Tho' no Statute directs that Surety ſhall be taken for the Peace, yet a Recognizance ſeems the moſt congruous Means for it: For none ſhall be bound to the King but by Record; and by the *St.* 33 *H.* 8. 39. all Obligations to the King ſhall be in his Name, *Solvend' Domino Regi. F. N. B.* 82.

And therefore, Juſtices uſually take Surety by Recognizance for keeping the Peace till the next Seſſions, againſt the King and all his People, and eſpecially againſt him who demands it.

And by the *St.* 3 *H.* 7. 1. The Juſtice ought to certify the Recognizance at the next Seſſions; that if the Party make Default, it may be recorded, and certified, with the Recognizance, into *Chancery*, *B. R.* or *Exchequer*.

And therefore, the next Seſſions is the proper Place for the Appearance of the Party; tho' the Recognizance does not mention before what Juſtices, or in what Court, or at what Time, he ought to appear. *Vide Dalt. c.* 119.

So the Recognizance may be for Life, or for Years, upon good Cauſe. *Vide Dalt. c.* 119.

And if no Time is mentioned, it ſhall be intended for Life. *Vide Dalt. c.* 119. 21 *Ed.* 4. 40. *b.*

But the Time and Sum in which he is to be bound, and the Number, and Sufficiency of the Sureties, are in the Diſcretion of the Juſtices. *Vide Dalt. c.* 119.

So a Recognizance to keep the Peace, generally, is good, without ſaying againſt *A.* in particular: Or, to keep it againſt *A.* without ſaying, againſt all in general. *Vide Dalt. c.* 119.

So a Recognizance to be levied of Goods only, or of Lands only, is good: For, *only*, ſhall be rejected, and the Recognizance ſhall be general. *Vide Dalt. c.* 119.

If the Sureties prove inſufficient, he ſhall be compelled to find new Sureties by Recognizance. *Vide Dalt. c.* 119.

So, if the Recognizance be forfeited. *Vide Dalt. c.* 115.

Otherwiſe, if a Surety dies: for his Executor ſhall be charged. 21 *Ed.* 4. 40. *b.* *Vide Dalt. c.* 119.

So a Juſtice of Peace may take Money *in Depoſito* for Surety of the Peace. *Per Berkly*, *Cro. Car.* 446. *Vide Dalt. c.* 119.

But a Recognizance, which does not mention the Preſervation of the Peace, will be void. *Vide Dalt. c.* 119.

Tho' it be, that he do not aſſault, maim, *&c.* For there are other Breaches of the Peace. *Vide Dalt. c.* 119.

(D. 21.) Of whom Surety of the Peace may be demanded.

Surety of the Peace may be demanded againſt every one under the Degree of a Peer, *Vide Dalt. c.* 117.

Tho' he be an Eccleſiaſtical Perſon; *Vide Dalt. c.* 117.

A Sheriff, Coroner, or other Officer of Juſtice. *Vide Dalt. c.* 117.

Tho' a Juſtice of Peace in the ſame Commiſſion. *Vide Cromp.* 122. *Dalt. c.* 117.

Tho' it be a Perſon attainted, or excommunicated. *Vide Dalt. c.* 115.

A *Feme Covert*, or Infant within the Age of Diſcretion: for the Sureties ſhall be bound for them. *Vide Dalt. c.* 117.

(D. 22.) And by whom.

So a *Feme Covert* may demand it againſt her own Huſband. *Reg.* 89. *F. N. B.* 80. *F.* 3 *Keb.* 433. 2 *Lev.* 128.

Or

Or a Huſband againſt his Wife. *Vide Dalt. c.* 117.
So a Perſon attainted, excommunicated, or abjured. *Vide Dalt. c.* 117.
Attainted in *Præmunire*. *Vide Dalt. c.* 117.
A Villein againſt his Lord, *& è Contra*. *Vide Dalt. c.* 117.
A Denizen, or Alien Amy. *Vide Dalt. c.* 117.
But not by an Alien Enemy. *Vide Dalt. c.* 117.
Or a *Non compos*; tho' Care ſhall be taken for his Safety. *Vide Dalt. c.* 117.

(D. 23.) Of whom, not.

But Surety of the Peace ſhall not be demanded againſt a Peer. *Vide Dalt. c.* 117.
Nor againſt one *Non compos*, tho' Care ſhall be taken to prevent his Miſchief. *Vide Dalt. c.* 117.
Nor againſt an Alien Enemy. *Vide Dalt. c.* 117.

(D. 24.) What Cauſe for it.

A Juſtice of Peace may demand Surety, if any in his Preſence aſſaults, or threatens corporal Damage to another. *Reg.* 88. *b.* *F. N. B.* 80.
Or threatens to burn his Houſe. *Reg.* 88, 9.
If he aſſaults the Juſtice himſelf; tho' it is more proper that another do it. *Vide Dalt. c.* 116.
If he comes with Force into the Preſence of the Juſtice in the Exerciſe of his Office, or goes, or rides in Arms (not being a Servant to the King, in Execution of Proceſs, Aid of an Officer, or upon Hue and Cry) to the Affray of the People againſt the *St.* of *Northampton*. 2 *Ed.* 3. 7 *R.* 2. 13. 12 *R.* 2. 6. or 20 *R.* 2. 1. *Vide Dalt. c.* 9.
If he makes a Duel, or ſends a Challenge.
Makes a Riot, Rout, or Unlawful Aſſembly. *Vide Dalt. c.* 116.
If he quarrels in the Preſence of the Juſtice. *Vide Dalt. c.* 116.
Gives the Lye to another in *Weſtminſter-hall Sedente Curiâ*. 1 *Lev.* 107.
If he makes an Affray, or terrifies the People. *Vide Dalt. c.* 116.
If he be brought before him by a Conſtable, for breaking the Peace. *Vide Dalt. c.* 116.
Or upon Oath by another of Corporal Miſchief done, or Menace of it, or of burning his Houſe, and that he is in Fear of it. 2 *Lev.* 228.
Or that he threatned it to his Wife, or Children. *Vide Dalt. c.* 116.
And, if the Wife makes ſuch Oath, tho' there are other Affidavits to the contrary. 2 *Lev.* 128.
So, if a Juſtice ſuſpects him inclined to break the Peace. *Vide Dalt. c.* 116.
If he be a Common Barretor. *Vide Dalt. c.* 116.
But it is not a Cauſe, that he threatens Impriſonment to another, or to burn his Goods: for he may have another Remedy by Action. *Vide Dalt. c.* 116.
That he has made a Battery, or a Variance. *Vide Dalt. c.* 116.
Or, that he is in Fear of Damage to his Servants, or Cattle. *Vide Dalt. c.* 116.

(D. 25.) What, for good Behaviour.

By the *St.* 34 *Ed.* 3. 1. Juſtices of Peace may take of all not of good Fame ſufficient Surety for their good abearing towards the King and his People.
And it may be granted by Juſtices of Peace, by Recognizance, or upon a *Supplicavit*, as Surety for the Peace. *Vide Dalt. c.* 123.
And for every Cauſe for which Surety of the Peace is demandable.
And againſt any of bad Fame, if he does that which tends to the Breach of the Peace.
As, if he be a Common Barretor. *Vide Dalt. c.* 124.

If he lies in wait to rob, or puts Paſſengers in Fear. *Vide Dalt. c.* 124.
Going with unuſual Arms, to the Terror of others. *R.* 1 *Keb.* 203.
If they are ſuſpected for Robbers, or Manſlayers. *Vide Dalt. c.* 124.
Nightwalkers, Pilferers, or Meſſengers of Thieves: for theſe are preſentable in the Leet. *Vide Dalt. c.* 124.
Dangerous Rogues, or Vagabonds.
If they practiſe in Poiſon for others, their Cattle, or Fowls. *Vide Dalt. c.* 124.
If they throw down Gates, or do Outrage in the Night. *Vide Dalt. c.* 124.
Eves droppers by Night, or by Day. *Vide Dalt. c.* 124.
Idle Perſons, who deſtroy Pigeons by Engines, or the Game, or do Treſpaſſes in Parks, or Warrens. *Vide Dalt. c.* 124.
If they ſuborn Witneſſes. *Mar.* 11.
Maintain, or reſort to Bawdy-Houſes. 13 *H.* 7. 10.
If they frequent Taverns or Alehouſes, not having Means of Livelihood. *Vide Dalt. c.* 124.
Suſpected for the Father of a Baſtard. *Lamb.* 122.
Libellers. *Vide Dalt. c.* 124.
Common Cheats, or Cozeners. *Vide Dalt. c.* 124.
If he abuſes a Juſtice of Peace in the Execution of his Office, or his Warrant, or refuſes to obey him. *Vide Dalt. c.* 124.
Or gives contemptuous Words to a Magiſtrate. 11 *Co.* 98.
Or provoking Words, as, *You lie, &c.* in *Weſtminſter-Hall.* 1 *Lev.* 107.

(D. 26.) What ſhall be a Forfeiture; Of a Recognizance for the Peace.

A Recognizance for the Peace ſhall be forfeited by any Breach of the Peace. *Vide Dalt. c.* 121.
As, if he does any Act to the Prejudice of the Perſon of another: as, Murder, or any Homicide. *Vide Dalt. c.* 121.
High Treaſon againſt the Perſon of the King. *Vide Dalt. c.* 121.
Burglary, or Robbery: for theſe relate to the Perſon. *Vide Dalt. c.* 121.
Rape, or any unlawful Battery, or Aſſault. *Vide Dalt. c.* 121.
Impriſonment of another. *Vide Dalt. c.* 121.
Throwing into the Water, or any other Miſuſage. *Vide Dalt. c.* 121.
Threatning of another, in his Preſence, to beat him. 2 *Rol.* 199.
Or in his Abſence, if he afterwards lies in wait for him. *Vide Dalt. c.* 121.
If he be concerned in a Riot, Rout, *&c.* *Cro. El.* 86. *Vide Dalt. c.* 121.
If he rides, or goes in Arms, or with unuſual Arms or Attendants, in Affray of the Country. *Vide Dalt. c.* 121.
So, if he gives a Challenge. 4 *Inſt.* 181.
Or commands, or procures, a Breach of the Peace, if it be afterwards broken. 4 *Inſt.* 180. *Vide Dalt. c.* 121.
If he procures another to break the Peace. 2 *Rol.* 199. *Vide Dalt. c.* 121.
But a juſtifiable Aſſault, or Battery, is not a Breach of a Recognizance for the Peace: As, by Correction of his Wife, Son, Servant, Apprentice, Scholar, Priſoner, Lunatick, *&c.* 3 *Keb.* 433. *Vide Dalt. c.* 121.
Or, in Defence of himſelf, his Wife, Son, Father, Maſter, Servant, or Goods, *&c.* *Vide Dalt. c.* 121.
By the Act of a Conſtable, or other Officer, in the Execution of Juſtice. *Vide Dalt. c.* 121.

In the Exerciſe of lawful Sports. *Vide Dalt. c.* 121.

So no Act, which does not concern the Perſon of another, tho' the Indictment for it be *contra Pacem*; As, Larceny, or other Felony of the ſame Nature. *Vide Dalt. c.* 121.

A wrongful Taking of the Goods of another, a *Diſſeiſin*, or Treſpaſs upon his Land. 4 *Inſt.* 181.

So, ſcolding Words: for an Act muſt be done. 4 *Inſt.* 180.

(D. 27.) Of a Recognizance for Good Behaviour.

So a Recognizance for Good Behaviour ſhall be forfeited by any Act, which amounts to a Breach of the Peace, or requires Surety for good Behaviour. *Vide Dalt. c.* 123.

An Eſcape from a Conſtable, being arreſted for Suſpicion of a Crime, tho' not guilty. *R. Godb.* 22. *Vide* 2 *Leo.* 166.

If he puts the People in Terror. 2 *Rol.* 199. *Semb.* 2 *H.* 7. 2. *b.*

So Words, which tend to the publick Prejudice, or which may make a Breach of the Peace. 2 *Rol.* 200.

But it will not be a Breach of a Recognizance for good Behaviour, that he enters into the Houſe or Land of another, or takes the Goods of another. 2 *Rol.* 199.

Or, if he calls a Perſon, who is guilty of Felony, *a Felon*. 2 *Rol.* 200.

Or calls another *Knave*, or uſes other Words of Paſſion to another not in Office. 2 *Rol.* 228.

*Vide* more concerning Forfeiture of a Recognizance for Good Behaviour, in *Juſtices of Peace*, (B. 8.)

(D. 28.) How ſuperſeded.

If any Perſon gives Surety of the Peace in *Chancery* or *B. R.* there ſhall be a *Superſedeas* to the Juſtices of Peace to take it. *F. N. B.* 238. *E.*

So, if he gives it before one Juſtice, he may have from him a *Superſedeas* requiring another Juſtice not to take it for the ſame Cauſe.

After a *Superſedeas* from the *Chancery* or *B. R.* if a Juſtice proceeds, an Attachment goes againſt him.

And if the Party be arreſted, it will be falſe Impriſonment.

Tho' the *Superſedeas* does not mention the Names of the Sureties, or the Sum in which bound.

(D. 29.) How diſcharged.

If Security be given upon a *Supplicavit*, and no Proſecution within a Year and a Day, the Security ſhall be diſcharged. *F,g.* 268.

So, if the Party be committed, after a Year he ſhall be diſcharged upon ſlight Security. *F,g.* 268.

How a Recognizance for the Peace may be diſcharged by Releaſe, or Death, *Vide* in *Juſtices of Peace*, (B. 6, 7.)

## FORCES.

*Vide Prærogative*, (C. 3.)

## FORCIBLE MARRIAGE.

*Vide Juſtices*, (S. 3.)

## FORECLOSURE.

*Vide Chancery*, (4 A. 11.)

## FOREIGN ATTACHMENT.

*Vide Attachment.—London*, (N. 1.)—*Pleader*, (2 G. 5.)

## FOREIGN COUNTY.

*Vide Action*, (N. 1, &c.)—*Juſtices*, (Y. 14.)—*Pleader*, (S. 11.)

## FOREIGN NATIONS.

*Vide Prærogative*, (B. 1, &c.)

## FOREIGN OPPOSER.

*Vide Courts*, (D. 15.)

## FOREIGN VOUCHER.

*Vide Courts*, (O. 2.)—*Voucher*, (D. 3.—H.)

## FOREST.

*Vide Chaſe, per Totum.*

## FORE-STALLING.

*Vide Juſtices of Peace*, (B. 38.)

# FORFEITURE.

## (A) Forfeiture, By Alienation, &c.

### (A. 1.) By Alienation of a Particular Tenant.

(A. 1.) What ſhall be. In *Pais*. *Vide Copyhold*, (M. 2, &c.)

IF Tenant for Life or Years conveys a greater Eſtate than he can lawfully do, whereby the Reverſion, or Remainder, is deveſted, it will be a Forfeiture of his Eſtate: as, if he makes a Feoffment. *Co. L.* 251.

If he conveys to another in Tail, or for his own Life, and Livery be made. *Co. L.* 252. *a.* 1 *Rol.* 854. *l.* 7.

Or, to another for his Life, if he himſelf ſo long lives: for the other has an Eſtate for his Life, tho' determinable upon the Death of the firſt Leſſee. 1 *Rol.* 854. *l.* 43. *Lane* 38.

If Tenant *pur auter Vie*, by Statute-Merchant, Staple, or *Elegit*, makes a Feoffment, *&c.* it will be a Forfeiture. *Co. L.* 252. *a.*

So, if Tenant after Poſſibility, by Curteſy, or in Dower, *&c.* makes a Feoffment, *&c.* *Co. L.* 252. *a.* 1 *Rol.* 851. *l.* 35.

So, if Tenant for Life or for Years, and the Remainder Man for Life, join in a Feoffment, *&c.* it will be a Forfeiture of both Eſtates. *Co. L.* 251. *b.* *R.* 1 *Leo.* 262. 1 *Rol.* 855. *l.* 15. 2 *And.* 66. *Dy.* 339. *a.* *R.* 1 *And.* 45, 6.

So, if he in Remainder for Life enters upon Tenant for Life, or Years, and makes a Feoffment, it will be a Forfeiture of his Remainder. *Co. L.* 251. *b.*

So, if there be Joint-tenants for Life, and one of them aliens in Fee, it will be a Forfeiture of his Eſtate.

So, if Huſband and Wife are Joint-tenants, and the Huſband alone aliens in Fee, it will be a Forfeiture for the Life of the Huſband. 29 *Aſſ.* 43.

So, if Huſband and Wife, ſeiſed in Right of the Wife for Life, make a Feoffment to *B.* to the Uſe of him and his Heirs for the Life of the Wife *tantum*: for by the Feoffment a Fee paſſed, tho' the Uſe be declared only for the Life of the Wife. *R.* 1 *Leo.* 126.

So, if Tenant for Life, or Years, Remainder or Reverſion to the King, makes a Feoffment, *&c.* it will be a Forfeiture; tho' the Remainder, or Reverſion in the King is not deveſted. *Co. L.* 251. *b.*

So, if Tenant for Life, Remainder to *B.* in Tail, Remainder to himſelf in Fee, makes a Feoffment, it will be a Forfeiture. 1 *Rol.* 851. *l.* 30. 854. *l.* 52.

So, if Huſband and Wife, Joint-tenants for Life, or ſeiſed in Right of the Wife, make a Feoffment, or the Huſband alone makes it, it will be a Forfeiture during the Coverture. *Vide Baron and Feme*, (I. 1.)

So, if Tenant for Life, Remainder in Tail, Remainder in Fee, enfeoffs him in Remainder in Fee, it will be a Forfeiture in Reſpect of the *meſne* Remainder. *R.* 1 *Co.* 140. *a.*

So, if he joins with him in the immediate Remainder in Tail, in a Feoffment, and not by Fine. 1 *Sid.* 83.

So, if Tenant for Life enfeoffs a Woman in the immediate Remainder and her Huſband, it will be a Forfeiture. *Bro. Forf.* 21. 1 *Rol.* 855. *l.* 10.

Or,

Or, him in the immediate Remainder and his Wife: for the whole Eſtate paſſes from the Tenant for Life, and therefore it is not warranted, tho' he in Reverſion cannot enter during the Eſtate of the Huſband. *Cont.* 41 *Ed.* 3. 21. *a.* *Acc. Bro. Entry cong.* 8. 82. 1 *Co.* 76. *b.*

(A. 2.) By Alienation by Matter of Record.

So, if Tenant for Life, or for Years, levies a Fine, it will be a Forfeiture. *Co. L.* 251. *b.*

So, by the *St.* 32 *H.* 8. 31. * if he ſuffers a Common Recovery.

Tho' he comes in as Vouchee. *R.* 1 *Co.* 14. 2 *Leo.* 61.

Tho' the Recovery, or Fine be afterwards reverſed by Error. *R.* 1 *Sid.* 90.

Tho' he was diſſeiſed before the Fine levied, whereby to ſome Intents, *Partes Finis nihil habuerunt.* *Co. L.* 252. *a.* *Dub.* 4 *Leo.* 217. *R. Mo.* 424. *Cro. El.* 451. *Cont.* 1 *And.* 38.

So, if Tenant for Life, Remainder for Life, levies a Fine to him in Remainder for Life, *Sur Conuzance come ceo, &c.* it will be a Forfeiture. *R.* 2 *Lev.* 202. 2 *Jon.* 65. *R.* 2 *And.* 66.

So, if Tenant for Life, Remainder to *B.* in Tail, Remainder to *C.* in Tail, *&c.* levies a Fine, or makes a Feoffment to *B.* and his Wife, and *B.* dies without Iſſue, and the Wife enters; it will be a Forfeiture to *C.* *R.* 1 *Rol.* 855. *l.* 10.

So, if Tenant for Life joins with *B.* to whom a Remainder in Tail was limited, when his Remainder is gone by the Feoffment of his Father with Warranty. *R.* 1 *Rol.* 856. *l.* 15. *Cro. Car.* 392.

So, if there be Tenant for Life, Remainder for Life, and he in Remainder for Life levies a Fine; it will be a Forfeiture of his Eſtate, tho' the Reverſion, or Remainder be not deveſted. *R.* 1 *Leo.* 40. *Dub. Sti.* 192, 3.

So, tho' the Remainder was to *A.* in Tail, and afterwards in Fee to him, who had the Remainder for Life, and levied the Fine. *R.* 1 *Rol.* 855. *l.* 20.

So, if there be a Leaſe for Years, Remainder to *A.* for Life, Remainder to *B.* in Tail, Remainder to *C.* for Life, *&c.* and *A.* and *C.* levy a Fine *Sur Conceſſit* for their Lives, it will be a Forfeiture; for they grant a greater Eſtate than they can lawfully make. *Semb.* 2 *Jon.* 70.

So, if Tenant for Life or Years of an Advowſon, *&c.* or other Thing which lies in Grant, levies a Fine, it will be a Forfeiture; tho' the Reverſion is not deveſted thereby. *Co. L.* 251. *b.* 1 *Rol.* 852. *l.* 40.

(A. 3.) What Alienation will not be a Forfeiture.

But, generally, an Alienation by a Particular Tenant is no Forfeiture, if the Reverſion, or Remainder is not thereby deveſted: and therefore, if Tenant for Life or Years of an Advowſon, Rent, Common, or other Thing which lies in Grant, by Deed grants his Eſtate to another in Fee, it is no Forfeiture. *Co. L.* 251. *b.* 1 *Rol.* 854. *l.* 9, 12.

So, if a Man in Remainder, or Reverſion, for Life, of Lands, *&c.* grants his Eſtate by Deed to another in Fee, it is no Forfeiture. *Co. L.* 251. *b.* 1 *Rol.* 854. *l.* 11.

So, if a *Ceſtuy que Uſe* for Life, before the *St.* 27 *H.* 8. 10. had made a Feoffment, it was no Forfeiture. *Mo.* 38, 9.

So, if Tenant for Life bargains and ſells to another in Fee, it is no Forfeiture. 2 *Leo.* 60.

Or, makes a Leaſe and Releaſe to another in Fee. 3 *Mod.* 151.

So, if Tenant for Life, or for Years, makes a Leaſe for 1000 Years. 2 *Leo.* 60.

Tho' he afterwards levies a Fine to corroborate the Leaſe; for Nothing paſſes but for his Life. *Dub.* 2 *Jon.* 99.

So, if Tenant for Life leaſes for Years to *A.* who makes a Feoffment, and Tenant for Life releaſes to the Feoffee; it is not a Forfeiture of the Eſtate for Life. 1 *Rol.* 855. *l.* 5.

So, if Tenant for Life, or Years, joins with him in Reverſion, or Remainder in Fee, in a Feoffment, or Fine, or Recovery, it is no Forfeiture; for each gives that which he lawfully may. *R.* 6 *Co.* 15. *a.*

And therefore, if a Fine or Recovery be reverſed for Infancy, *&c.* of him in Reverſion or Remainder, the Conuſee ſhall hold during the Life of Tenant for Life. *R.* 1 *Co.* 76. *b.* 2 *Leo.* 108.

So, if Tenant for Life joins with him in the immediate Remainder in Tail, in a Fine, it is no Forfeiture; for each gives that which he lawfully may, and it will be a Conveyance of the Tail, and afterwards of the Eſtate for Life. * *R.* 1 *Co.* 76. *Hob.* 277. *R.* 1 *Sid.* 83. *R.* 2 *And.* 66.

* [*Vide* 1 *Vent.* 160.]

So, if an Eſtate be limited to the Huſband for Life, to the Wife for Life, Remainder to the Heirs of their Bodies, and Huſband and Wife join in a Fine. *R. Ray.* 36. 1 *Sid.* 83.

Or, to *A.* for Life, Remainder to a Woman; and *A.* and the Woman intermarry, and join in a Fine. *R. Cro. El.* 828.

So, if an Eſtate be to the Wife in Tail, Remainder to the Huſband *pur auter Vie*, and they join in a Fine; it is no Forfeiture of the Remainder for Life, if the Wife dies without Iſſue. 1 *Rol.* 854. *l.* 47.

So, if an Eſtate be to *A.* for Life, Remainder to *B.* in Tail, who join in a Fine, and *B.* dies without Iſſue; the Conuſee ſhall hold for the Life of *A.* *R.* 1 *Vent.* 160.

So, if a Leſſor diſſeiſes *A.* his Leſſee for Life, and afterwards leaſes to *B.* for Life; if *B.* leaſes to *A.* for Life, it is no Forfeiture: for *A.* is remitted, and thereby the Livery made by *B.* avoided, and *B.* has the Reverſion for Life. 1 *Rol.* 854. *l.* 22.

So, if Tenant for Life makes a Feoffment, or levies a Fine, and limits the Uſe only for his own Life, it will not be a Forfeiture.

So, if a Huſband, ſeiſed in Right of his Wife for Life, levies a Fine, *&c.* to the Uſe of his Wife during her Life. *R.* 1 *Rol.* 854. *l.* 35.

So, if a Leſſee for Life levies a Fine to *A.* for the Life of himſelf, to the Uſe of *A.* for his Life, it is no Forfeiture: for the Limitation is but for his own Life, tho' the Uſe is declared to *A.* for his Life. 1 *Rol.* 854. *l.* 40.

## (A. 4.) By a Claim of the Fee.

So, if a Particular Tenant claims the Fee, it will be a Forfeiture: as, if he joins the *Miſe*, in a Writ of Right againſt him, upon the mere Right; for Tenant in Fee only can do it. *Co. L.* 251. *b.* 9 *H.* 5. 14. *a.* 1 *Co.* 16. *a.*

So, if Tenant for Years brings an Aſſiſe, *ut de libero Tenemento*. *Co. L.* 251. *b.*

Or, in Debt for Rent againſt him, claims a Fee by Bargain and Sale of his Leſſor. *R.* 3 *Leo.* 169. *Mo.* 212.

Tho' the Bargain and Sale be traverſed. *R.* 3 *Leo.* 169.

If a Recovery be againſt Tenant for Years, in a *Præcipe quod reddat*, and he brings Error, for Error in Proceſs. *Co. L.* 251. *b.*

So, if Leſſee for Life, or Years, claims the Fee in a *Quid Juris Clamat.* 1 *Rol.* 853. *l.* 11.

Tho' he has Colour, or Pretence to do it. 1 *Rol.* 853. *l.* 12.

(A. 5.) Or

(A. 5.) Or by an Affirmance of the Fee in a Stranger.

So, if Tenant for Life, or Years, affirms the Fee in a Stranger: as, if he prays in Aid of a Stranger. *Co. L.* 252. *a.*

Or, attorns, upon Record, to the Grant of a Stranger. *Co. L.* 252. *a.* 1 *Rol.* 852. *l.* 30.

Or, confeſſes the Action in a Writ of Entry *in Caſu proviſo*, which ſuppoſes the Reverſion in a Stranger. *Co. L.* 252. *a.*

Or, pleads covinouſly, to the Diſheriſon of him in Reverſion: as, if in Waſt by a Stranger, he pleads, *No Waſt done*. *Co. L.* 252. *a.* 1 *Rol.* 853. *l.* 27.

Or, in a *Præcipe quod reddat* againſt him, he diſclaims. *Bro. Forf. de Terre* 92.

Or, confeſſes the Action. 2 *Leo.* 60. 1 *Rol.* 853. *l.* 40.

So, if by Covin with the Demandant, a *Præcipe* is brought againſt him and *B.* as Joint-tenants, and after the *Miſe* joined they make Default, whereupon final Judgment is given; after Judgment reverſed by Diſceit, the Eſtate of the Leſſee ſhall be forfeited. 1 *Rol.* 853. *l.* 30.

So, if the Demandant recovers by Render, Default, *Nient dedire*, or feigned Plea of the Leſſee. 1 *Rol.* 853. *l.* 45, 50.

So, if Tenant for Life accepts from a Stranger a Fine *Sur Conuſance de Droit come ceo, &c.* for thereby he affirms upon Record the Reverſion to be in a Stranger; tho' the Reverſion is not thereby deveſted. *Co. L.* 252. *a.* 9 *Co.* 106. *b.* *Per Hale*, 1 *Mod.* 117. 1 *Rol.* 852. *l.* 50.

If there be Tenant for Life, Remainder for Life, *&c.* and he in Remainder accepts a Fine *Come ceo, &c.* from the Tenant for Life; it will be a Forfeiture of his Remainder. *R.* 2 *Lev.* 202.

If Tenant for Life, by Bargain and Sale, conveys to *B.* and afterwards levies a Fine *Come ceo, &c.* to him; tho' Nothing paſſes by the Bargain and Sale but for the Life of the Tenant, yet when the Bargainee accepts a Fine from him, it will be a Forfeiture. 1 *Leo.* 264. 4 *Leo.* 217.

So, if Tenant for Life prays in Aid, and when the Reverſioner comes in by Proceſs, he pleads that he is not the ſame Perſon.

So, if the Reverſioner comes in without Proceſs, if he be the ſame Perſon to whom the Reverſion belongs; for, by his Plea, he ſuppoſes the Reverſion in another. 1 *Rol.* 853. *l.* 5.

But it is no Forfeiture, if Tenant for Life vouches a Stranger. *Bro. Forf. de Terre* 87.

If he accepts a Fine upon a Releaſe. 4 *Leo.* 217. 1 *Rol.* 853. *l.* 2. *Dy.* 148. *b.*

If he attorns to a Stranger upon a Judgment in a *Quid Juris Clamat*. 1 *Rol.* 853. *l.* 23.

Or, attorns upon a Grant by a Fine of the Reverſion in *Mortmain*. 1 *Rol.* 853. *l.* 25.

So, if Tenant for Life pleads an Attainder and Forfeiture by *A.* from whom the Plaintiff in a *Quid Juris Clamat* claims; tho' the Plaintiff ſhews a Reverſal, upon which the Leſſee demurs, and there is Judgment againſt him. 1 *Rol.* 853. *l.* 20.

Or, in a *Quid Juris Clamat* for a Rent of 10*l.* pleads, that it is but 40*s.* and it is found againſt him. 1 *Rol.* 853. *l.* 15.

So, if Tenant for Life loſes to a Stranger by involuntary Miſpleading. 1 *Rol.* 853. *l.* 41.

(A. 6.) Entry

## (A. 6.) Entry for the Forfeiture.

(A. 6.) By whom it ſhall be. *Vide Claim*, (A. 3.—B 2.) —*Condition*, (G. 1, 2.—O. 1, 2.)

Entry for a Forfeiture ought to be by him, who is next in Reverſion, or Remainder after the forfeited Eſtate.

As, if Tenant for Life or Years commits a Forfeiture, he who has the immediate Reverſion, or Remainder, ought to enter; tho' he has the Fee, or only an Eſtate Tail. 1 *Rol.* 857. *l.* 45, 50. 858. *l.* 5.

Tho' the next Remainder was only for Life. *Co. L.* 252. *a.* 1 *Rol.* 858. *l.* 10.

If an Eſtate be given to *A.* and *B.* for Life, and to the Heirs of *B*; if *A.* makes a Feoffment, *B.* may enter. 1 *Rol.* 858. *l.* 22.

But if the next in Remainder does not take Advantage of the Forfeiture, after his Eſtate determined, he in a ſubſequent Remainder may enter: as, if *A.* Tenant for Life, Remainder to *B.* in Tail, Remainder to *C.* in Tail, makes a Feoffment, and afterwards *B.* dies without Iſſue before Entry, *C.* may enter. 1 *Rol.* 857. *l.* 45. 858. *l.* 20.

So, if the Remainder was to *B.* for Life, and *B.* dies. *Mo.* 18.

So, if he in Remainder for Life will not enter, he in the ſubſequent Remainder, or Reverſion, may enter in his Name, for the Preſervation of the Inheritance. 1 *Rol.* 858. *l.* 12.

So, if the Lord of a Copyholder for Life grants a Leaſe for Years, to commence after the Death, Forfeiture, *&c.* of the Copyholder for Life, who commits a Forfeiture; if the Lord will not enter, the Leſſee may. *R.* 1 *Rol.* 858. *l.* 25.

So, if he in Remainder, or Reverſion dies before Entry, his Iſſue, or Heir may enter. 1 *Rol.* 858. *l.* 15, 37.

So, if he in Remainder in Tail, releaſes to the Feoffee of Tenant for Life, and dies, his Iſſue may enter; for tho' the Father was barred by the Releaſe, the Iſſue ſhall not. 1 *Rol.* 858. *l.* 2.

(A. 7.) By whom, not.

But he in the next Remainder, or Reverſion ſhall not enter for the Forfeiture, if his Eſtate does not continue.

If an Eſtate be to *A.* and a *Feme Covert*, and the Heirs of the Body of the Woman by her Huſband begotten, and the Huſband dies without Iſſue, whereby the Woman is Tenant in Tail after Poſſibility; if *A.* makes a Feoffment, the Woman cannot enter; for ſhe was ſeiſed before *per my & per tout.* 1 *Rol.* 858. *l.* 30.

(A. 8.) At what Time it ſhall be. *Vide Claim*, (A. 4.—B. 3.) —*Condition*, (G. 3.)

If Leſſee for Life makes a Feoffment, and dies; Entry may be made after his Death. 1 *Rol.* 857. *l.* 25.

If an Alienation by Tenant for Life, or Years, be to *A.* for Life, Remainder to *B.* who enters after the Death of *A*; he in Reverſion, or Remainder may enter upon *B.* 1 *Rol.* 857. *l.* 5.

Or, if *B.* dies before *A.* he may enter upon the Heir of *B.* 1 *Rol.* 857. *l.* 15.

So, if the Alienation be to *A.* in Tail, who dies without Iſſue, he may enter upon the Alienor. 1 *Rol.* 857. *l.* 20.

So, if the Alienation be to *A.* in Fee, who aliens to another, he may enter upon the 2d Alienee, tho' he was not a Party to the Forfeiture. 1 *Rol.* 857. *l.* 13.

But if Tenant for Life, of an Advowſon in Groſs, levies a Fine of it, and the Church becomes void before Entry, he in Reverſion, or Remainder, has loſt the Advantage of the Avoidance; for it was veſted as a Chattel before the Eſtate of the Tenant for Life was defeated (for it cannot be defeated

ſeated without Claim) and it cannot be afterwards deveſted by the Preſentation of him in Reverſion. *R.* 1 *Rol.* 857. *l.* 3.

### (A. 9.) Who are bound by the Forfeiture.

A Feoffment by a Huſband, or by Huſband and Wife, of an Eſtate for Life, of which the Huſband is ſeiſed in Right of his Wife, or jointly with his Wife, binds only during the Coverture. 1 *Rol.* 851. *l.* 45, 50. *Vide Baron and Feme*, (K.—R.) *Vide Ante*, (A. 1.)

### (A. 10.) What does not excuſe a Forfeiture.

Ignorance of his Eſtate does not excuſe.

So a Forfeiture ſhall not be excuſed for Want of Notice, where no one is bound to give it: as, if Huſband and Wife are ſeiſed for Life, Remainder to *B.* their Son in Tail, with the Fee expectant, and the Huſband makes a Feoffment with Warranty, and dies; if afterwards the Wife joins with *B.* in a Fine, it will be a Forfeiture of her Eſtate for Life: for the Eſtate of *B.* in Tail, and the Fee expectant, was bound by the collateral Warranty, and *B.* was, as it were a Stranger; tho' the Wife did not know of the Warranty, no one being bound to give her Notice. *R.* 1 *Rol.* 856. *l.* 15. *Cro. Car.* 392.

### (A. 11.) Diſpenſation.

It ſhall be a Diſpenſation of the Forfeiture, if he in Reverſion, or Remainder be a Party to the Eſtate made, and accept it: as, if a Huſband, ſeiſed in Right of his Wife for Life, leaſes to him in Reverſion for his own Life. 1 *Rol.* 856. *l.* 10.

(A. 11.) What ſhall be. *Vide Condition*, (P.)—*Copyhold*, (M. 8.)

But Acceptance of an Eſtate by him, who is within Age, ſhall not be a Diſpenſation of the Forfeiture: as, if Leſſee for Life, or Years, leaſes to him in Reverſion (being within Age) for his own Life, it will be a Forfeiture; for the Acceptance by the Infant ſhall not prejudice him. 1 *Rol.* 855. *l.* 45.

(A. 12.) What not.

So, if he in the next Remainder releaſes, *&c.* to the Feoffee of Tenant for Life, or Years, it will be a Diſpenſation only for his own Eſtate. 1 *Rol.* 856. *l.* 1.

If he in Remainder in Tail releaſes, *&c.* it will be no Diſpenſation as to the Iſſue. 1 *Rol.* 856. *l.* 1.

### (A. 13.) What does not purge the Forfeiture.

If Leſſee for Life, or Years, makes a Feoffment upon Condition, and afterwards enters for the Condition broken; this does not purge the Forfeiture. 1 *Rol.* 856. *l.* 35, 40.

## (B) Forfeiture for a Crime.

### (B. 1.) For High Treaſon.

AS to Forfeiture of a Copyhold, *Vide Copyhold*, (M. 1, &c.)

As to Forfeiture by Outlawry, *Vide Utlagary*, (D. 1, &c.)

(B. 1.) What Lands and Tenements.

If a Man be attainted for High Treaſon, he forfeits all his Lands, and Tenements, Goods, and Chattels.

So, his Dignity, tho' entailed. *R.* 7 *Co.* 34. *Vide Dignity*, (E.)

And by the *St.* 26 *H.* 8. 13. and 5 & 6 *Ed.* 6. 11. (which is not repealed by the *St.* 1 *Mar. ſſ.* 1. *ch.* 1. He ſhall forfeit all ſuch Lands, *&c.* of which he ſhall have any Eſtate of Inheritance in his own Right, in Uſe, or Poſſeſſion.—Which extends to his Lands in Tail, as well as in Fee Simple. *St. P. C.* 187. 2 *Lev.* 170. *R.* 7 *Co.* 34. *b.*

So he forfeits his Right of Entry into any Lands or Tenements. *St. P. C.* 187, 8. *Vide Poſt*, (B. 2.)

Entry for a Diſcontinuance.

If Tenant in Tail diſcontinues in Fee, the Right to the Entail is forfeited. *R.* 2 *Rol.* 504. *Jon.* 71.

So an Annuity of Inheritance ſhall be forfeited; for it is an Hereditament. *R.* 7 *Co.* 34. *b.*

So, where ſince 26 *H.* 8. 13. and 5 & 6 *Ed.* 6. 11. it is enacted, That all the Lands, Tenements, Hereditaments, *&c.* of *A.* ſhall be forfeited; This extends to Lands which *A.* had in Tail. *R.* 2 *Mod.* 133. 2 *Jon.* 57. 1 *Vent.* 299.

Tho' the Entail was to *A.* and his Wife, and the Heirs of their Bodies, and the Wife ſurvives. *R.* 1 *And.* 39.

So he forfeits all Evidences and Charters which concern the Lands or Tenements forfeited, and the King ſhall have them. *St. P. C.* 187. *b.*

So, if a Condition be given to the King, as forfeited for High Treaſon, the King may tender Gold, to defeat a Settlement upon Condition to be void by a Tender of the Feoffor. *R.* 7 *Co.* 13. 1 *And.* 294. *But quere the ground of the decision.*

So, if by Statute all Lands, Rights, Intereſts, *&c.* are forfeited, an Eſtate Tail is forfeited. *R.* 2 *Lev.* 170.

But he does not forfeit Lands and Tenements, which he has *en autre Droit*: as, in Right of his Church. *St. P. C.* 187. *b.*

Or, in Right of his Wife. *St. P. C.* 187. *b.*—*Cont. Semb. Lane* 54.

So, by the Common Law, he does not forfeit an Uſe, or Lands in Truſt for him. 12 *Co.* 2. *Dub. Hard.* 405. 1 *Sid.* 260. *R. Hard.* 495. (*Vide* 2 *Cro.* 513.)

So he does not forfeit Rights of Action for the Recovery of an Eſtate in a Stranger.

So he does not forfeit Lands, which he has as Truſtee for another. *Cont. Lane* 39, 54. *Vide Roy*, (D.)

So, if a Term attends the Inheritance, which was in Truſt for a Felon; the Inheritance not being forfeited, the Term ſhall not be ſo. *R. Hard.* 495. *Vide Poſt*, (B. 2.)

So he does not forfeit the Right, which a Stranger has, to Lands in his Poſſeſſion. *Jon.* 71.

So, if a Man Tenant in Tail levies a Fine to the ſame Uſes, where the Eſtate Tail is not forfeited, this Seiſin in Fee, for an Inſtant at the Time of the Fine, ſhall not make a Forfeiture. *R.* 2 *Lev.* 170.

(B. 2.) What Goods and Chattels.

So, for High Treaſon, he forfeits all Goods and Chattels, which he had in Poſſeſſion in his own Right.

Or, to which he had Right. *St. P. C.* 188.

So, a Term for Years, and Goods in Truſt for him. 1 *Sid.* 260. *R.* 1 *And.* 294. 2 *Cro.* 512, 3. *Vide Ante*, (B. 1.)

So he forfeits Bonds, and other Securities for Money; and the King, or his Grantee, may maintain an Action in his own Name. *St. P. C.* 188. *a.* 12 *Co.* 2.

So, Debts due upon Contract. *St.* 188. *a.* 12 *Co.* 2.

So, a Right to have an Action. *St.* 188. *a.* *Vide Ante*, (B. 1.) But it was held that a *Choſe en Action* is not forfeited. *Sav.* 40 Nor a Right to an Action *in Groſs*. *Jon.* 71. *See further Hob.* 342. 349. 351. So

So he forfeits Goods in his Poſſeſſion, of which the Property is not known: as, if *A.* bails Money, or Corn out of a Sack or Bag, to *B.* who is afterwards attainted, the King ſhall have it; for being out of a Bag, one cannot be known from another. *St. P. C.* 188. *a.*

So, Goods in his Hands, which he ſtole, tho' the Property is not in him. *St.* 188. *a.*

But a Right to have an Action for a Wrong to his Perſon, is not forfeited: as, for a Battery. *St. P. C.* 188. *a.*

So Goods, in the Hands of a Man attainted, by Bailment, *&c.* if they can be known, ſhall be reſtored to the Owner, if he ſhews the Bailment before the Juſtices, and upon Inqueſt it be found ſo. *St.* 188. *a.*

So he does not forfeit Goods which he has as Executor, or Adminiſtrator. *St.* 188. *b.*

So, if a Man, indicted for High Treaſon, ſtands Mute, or refuſes to anſwer, he ſhall have the ſame Judgment by Attainder, as if he was convicted by Verdict, or Confeſſion. *Co. L.* 391. *a.*

So, if a Man be killed in levying War againſt the King; he forfeits his Lands, Goods, and Chattels. *St.* 189. *a.*

So, if he be killed in Purſuit upon an Eſcape, or upon his Arreſt, he forfeits his Goods and Chattels. *Vide Poſt*, (B. 3.)

So, if a Man be attainted for High Treaſon, his Blood is corrupted. *Co. Lit.* 41. *a.* 391. *b.* *Vide Diſcent*, (C. 13.)

And his Wife ſhall loſe her Dower; for the *St.* 1 *Ed.* 6. 12. which gives her Dower, is repealed by 5 & 6 *Ed.* 6. 11. *Vide Dower*, (A. 2.)

And ſhe ſhall loſe her Dower againſt the Feoffee of the Huſband, as well as againſt the Lord by Eſcheat. *Co. L.* 41. *a.*

So, her Dower *Ad Oſtium Eccleſiæ*, or, *Ex Aſſenſu Patris*. *Co. L.* 41. *a.*

So, Dower by Cuſtom. *Co. L.* 41. *a.*

Where by Statute Corruption of Blood is prevented in Caſes of High Treaſon, the Forfeiture of Lands and Goods continues; for they are directly forfeited, and not by Way of Eſcheat: and therefore the Forfeiture remains without expreſs Words. *R.* 1 *Sal.* 85. *Vide Poſt*, (B. 3.)

## (B. 3.) For *Petit* Treaſon, or Felony.

So, if a Man be attainted for *Petit* Treaſon, or Felony, he forfeits all his Lands and Tenements, which he had in Fee in his own Right. *Co. L.* 41. *a.*

Or, if he be outlawed, or abjures the Realm. *Co. L.* 390. *b.*

So, the Profits of Lands, which he had in Tail, during his Life; but not his Eſtate or Freehold. *Dub.* 2 *Leo.* 123, 126. 3 *Leo.* 185. 4 *Leo.* 112.

So he forfeits all his Goods and Chattels. *Co. L.* 41. *a.*

So, a Leaſe for Years in Truſt for him. *Hard.* 405. *Semb. cont.* 1 *Sid.* 403.

So, a *Choſe en Action*: as, a Bond, Covenant for Payment of Money, *&c.* *R. Noy* 155.

But he does not forfeit Things not held of any one; as, Fairs, Markets, Common, Rents Charge or Seck, Warren, Corody, *&c.* of which he is ſeiſed in Fee; but the King ſhall have them for his Life, and afterwards they are extinct: for they cannot deſcend, where the Blood is corrupted, nor eſcheat, where there is no Tenure. 3 *Inſt.* 21.

So, if he be convicted for *Petit* Treaſon, or Felony, he forfeits all his Goods and Chattels. *Co. L.* 391. *a.*

So,

So, if he fled, or was sued to the Exigent, tho' he be afterwards acquitted. *Vide supra. Vide Waife*, (B.)

So, if he be arrested for Treason, or Felony, and escapes, and in the Pursuit is killed; upon Presentment before the Coroner, or Justices of *B. R. &c.* he forfeits his Goods and Chattels. *St.* 189. *a.*

So, if he be killed in Resistance upon the Arrest. *St.* 189. *a.*

But for *Petit* Larceny a Man does not forfeit his Lands, or Goods. *Co. L.* 41. Goods are forfeitable for petit larceny 1. Hal. Hist. Pl. C. 530, 1. Hawk. Pl. C. [illegible] c. 34. 586 [illegible]

So, if he be found guilty of Grand Larceny, and has his Clergy, or be burnt in the Hand, another found guilty, as Accessary to the same Felony, does not forfeit his Lands, or Goods; for he ought to be discharged, the Principal not being attainted. *R. Cro. Car.* 567.

So, by the *St.* 1 *Ed.* 6. 12. A Wife does not lose her Dower by the Attainder of her Husband for Felony.

So the Goods of a Wife, married after Conviction and Clergy had, are not forfeited. *Noy* 6.

So, in Felony, where a Statute prevents Corruption of Blood, the Forfeiture of Lands is prevented as a Consequence; for the Forfeiture is by Way of Escheat, for Defect in the Descent by Reason of the Corruption of the Blood. 1 *Sal.* 85. *Vide Ante*, (B. 2.)

So, if a Man be pardoned before Conviction, he does not forfeit his Goods, or the Profits of his Lands. 5 *Co.* 110. *b.*

So, if a Man be found guilty of Homicide *se defendendo*, he shall lose his Goods and Chattels. *H. P. C.* 41.

So, if he be indicted for it before the Coroner, and that he fled. 2 *Inst.* 316. *Dy.* 238. *b.*

So, if he be indicted for Homicide *se defendendo*, or by Misadventure, and be outlawed. 2 *Inst.* 316.

Tho' upon Verdict after his Arraignment it be found that he did not fly; for this does not controul the Finding before the Coroner. *R. Dy.* 238. *b.*

But in Homicide *se defendendo*, there shall be a Pardon of Course for his Goods. *H.* 40. 2 *Inst.* 316.

And by the *St.* 24 *H.* 8. 5. If any kill a Person, who lies in wait to murder, or rob him, or to commit Burglary, he shall not forfeit his Goods or Chattels. *

* [Nor Lands or Tenements.]

So, in an Appeal, as well as upon an Indictment, a Man found guilty *se defendendo*, or by Misadventure, shall have a Pardon of Course. 2 *Inst.* 316.

And the King cannot refuse it; and therefore, it shall be granted by the Chancellor, without the King's Warrant. 2 *Inst.* 317.

Yet if it be found that a Man made an Assault upon another near the Highway, without saying, that it was *ad murdrandum*, it is not sufficient to excuse his Goods. *R. Bend. pl.* 86. 1 *And.* 41.

## (B. 4.) When the Forfeiture shall be seised.

After Conviction, the Sheriff, or his Bailiff, *&c.* may seise the Goods of a Felon convict, for the King. *Co. L.* 391. *a.* *St. P. C.* 192. *b.* *Vide Post*, (B. 7, 8.)

So, by the *St.* 25 *Ed.* 3. *St.* 5. *c.* 14. After Indictment of Felony, and *Capias* returned *Non est inventus*, a second *Capias* shall go returnable in three Weeks, comprizing also, that the Sheriff seise his Goods, and keep them till the Return of the Writ; and if then he render not, nor be taken, he shall lose his Goods: if taken, or he render, his Goods are saved.

So, by the *St. De Officio Coronatoris*, 3 (4) *Ed.* 1. If any be found guilty of Homicide the Coroners shall go to his House, & *inquirant quæ Catalla &*

2

*& Blada habeat, quam Terram, & Quantum valet per Annum, & appreciari faciant ut vendi poſſint, & deliberentur Villatæ, ut inde reſpondeant coram Juſticiariis. St. P. C. 50. c. 192. b.*

But by the *St.* 1 *Ric.* 3. 3. No Sheriff, Bailiff, *&c.* ſhall ſeiſe the Goods of a Felon, before he be convict for the Felony. *Co. L.* 391. *a. St. P. C.* 193.

And this was a Declaration of the Common Law. *Hard.* 97. *St. P. C.* 52.

If he may ſeiſe, inrol, and deliver to the Vill; he cannot remove. *St. P. C.* 192. *b.*

## (B. 5.) To whom the Forfeiture ſhall be.

By the Common Law, if a Man be attainted for High Treaſon, the Forfeiture ſhall be to the King, of whatever Lord the Lands are held. *St. P. C.* 197. *a. Co. L.* 13. *a.*

So, if a Man be attainted for *Petit* Treaſon, or Felony, the King ſhall have Year, Day, and Waſt. *Vide Ann, Jour, & Waſt.*

But upon an Attainder for *Petit* Treaſon, or Felony, the Forfeiture of the Lands and Tenements of the Felon ſhall be to the Lord of whom the Lands are held.

So, if a Man has by Grant *Jura regalia*, the Forfeiture of Lands in Fee Simple for an Offence, which was High Treaſon at the Time of the Grant, ſhall be to the Patentee. *R. Dy.* 289.

## (B 6.) To what Time it ſhall relate.

If a Man be attainted for Treaſon, or Felony, by Verdict, or Confeſſion, the Forfeiture * relates to the Time of the Offence, to avoid all Alienations afterwards. *Co. L.* 390. *b. Stamf.* 192. *a.*

* [As to Real Eſtate]

Otherwiſe, if he be attainted upon an Appeal, by Verdict or Confeſſion. *Vide infra.*

So, if he be attainted by Outlawry upon an Indictment. *Co. L.* 390. *b.* 13. *a. R.* 30 *H.* 6. 5. *a.*

So, if a Man be convict in a *Præmunire. Dub. Cro. Car.* 173. *Jon.* 217.

So, if a Man be a Fugitive beyond Sea, it relates to the Time of his Flight. *R.* 2 *Cro.* 82.

So, if a Man be *Felo de ſe*, the Forfeiture relates to the Fact. 1 *Lev.* 8.

And is veſted in the King before Inquiſition found. *R.* 1 *Lev.* 8. *R.* 2 *Cro.* 82.

But the Forfeiture of Goods and Chattels relates to the Time of the Conviction. *St. P. C.* 192. *a. Co. L.* 391.

So, upon Preſentment of the Coroner, of a *Fugam fecit*, the Forfeiture relates to the Day of the Preſentment. *St.* 192. *a.*

So, if it be found by Verdict that he fled, to the Time of the Verdict. *St.* 192. *a.* To the Time of the Indictment, or Acquittal. 5 *Co.* 109. *b.*

So the Forfeiture, as to the *meſne* Profits of Lands, relates only to the Conviction. *Co. L.* 390. *b.*

So the Forfeiture by Outlawry upon an Appeal; for the Time of the Offence is not mentioned in the Count. *Co. L.* 390. *b.* 13. *a.*

### (B. 7.) When it ſhall not be ſeiſed.

But Lands or Goods of any indicted for Treaſon, or Felony, cannot be ſeiſed into the King's Hands before Attainder. 2 *Inſt.* 48. *Vide Ante*, (B. 4.)

Neither can they be granted before, by the King to another. 2 *Inſt.* 48.

So a Man ought to live upon his Goods, and the Profits of his Lands, till he be attainted. 2 *Inſt.* 48. *St. P. C.* 192, 3.

### (B. 8.) In what Manner ſeiſed.

After Conviction by Judgment, or Outlawry, for High Treaſon, *&c.* a Commiſſion goes to Perſons named by the King, or the Attorny General, to inquire, what Lands and Tenements the Offender had at the Time of the Treaſon committed, and the Value; and that they ſeiſe them into the King's Hands.

And the Inquiſition taken thereon ſhall be returned to the Court of *Exchequer*, and filed in the Office of the King's Remembrancer. *Lut.* 997.

So, after Conviction for Felony, a *Scire facias* ſhall go againſt the Vill, or any other, who has the Goods in his Cuſtody. *St. P. C.* 194.

But if any one has Title to the Goods or Lands found by Inquiſition to be the Goods or Lands of the Offender, he may make his Claim, by pleading his Title. *Lut.* 998. *Vide Prærogative*, (D. 83, 84.)

To which the Attorny General ſhall demur, or reply.

## (C) Forfeiture by Penal Statutes.

SO, in all Caſes, where a Penalty, or Forfeiture is given by Act of Parliament, without ſaying, to whom it ſhall be, or a Limitation for a Recompence for the Wrong to the Party, it belongs to the King.

If the Penalty or Forfeiture is given for a Non-feaſance, as well as for a Mis-feaſance.

And therefore, where by the *St.* 5 & 6 *Ed.* 6. 16. If any ſell an Office, *&c.* he forfeits his Right, Intereſt, *&c.* in ſuch Office, Deputation, Gift, or Nomination to it; in ſuch Caſe, the Gift, or Nomination, belongs to the King. *R.* 2 *Vent.* 267.

*Vide* more concerning *Forfeiture*, in *Chancery*, (3 L.—4 D. 2.)—*Copyhold*, (H. 7.—M. 1, &c.)—*Forceable Entry*, (D. 26, 27.)—*Franchiſes*, (G. 3.)—*Liberties*, (C. 1, 2.)—*Market*, (I.)—*Officer*, (K. 2, 8, 11, &c.)—*Patent*, (F. 3.)—*Prærogative*, (D. 60.)

# FORGERY.

## (A) Forgery, What ſhall be.

### (A. 1.) By the Common Law.

FORGERY is, where a Man fraudulently writes, or publiſhes a falſe Deed, or Writing, to the Prejudice of the Right of another.

So, if he eraſes Words out of a Deed.

If he falſifies a Copy of a Depoſition upon Record, by erazing the Words, (*that*, *did*) whereby the Depoſition is made more poſitive. 3 *Ruſh. App.* 2. 39.

If a Deviſe be to *A.* for Life, Remainder to *B.* in Fee, if a Man writing the Will omits the Eſtate for Life. *Mo.* 760.

But if a Man alters a Deed to his Prejudice, it will not be a Forgery: as, if the Obligee makes the Obligation to be for a leſs Sum. 1 *Sal.* 375.

If a Man indorſes *Exchequer* Bills, as received for Cuſtoms, where he is not an Officer; for he prejudices himſelf only. *R.* 1 *Sal.* 375.

So, if he omits to inſert in a Will, *&c.* a Legacy, or other Thing; if the Deviſe made be not altered thereby, it is no Forgery. *R. Mo.* 760.

If he writes a Will for a Perſon Non-ſane, and delivers it to him; It is no Forgery, but a Miſdemeanor, if he knew it. *Mo.* 760.

### (A. 2.) By the *St.* 5 *El.* 14.

By the *St.* 5 *El.* 14. * (by which all former Statutes for Forgery are repealed,) Any, who ſhall, of his own Head, or by Fraud with others, *&c.* forge, make, or cauſe to be forged, *&c.* any falſe Deed, Charter, or Writing ſealed, Court-Roll, or Will, to the Intent to moleſt, *&c.* the Freehold, or Inheritance, Right, *&c.* of Lands, Freehold or Copyhold: Or ſhall publiſh, or give it in Evidence, knowing it to be forged, being Convict by Action founded on this Statute at the Suit of the Party grieved, or otherwiſe according to Courſe of Law, or by Information in the Star-Chamber, ſhall pay double Coſts and Damages to the Party grieved, be ſet on the Pillory, have both his Ears cut off, his Noſtrils ſlit and ſeared with hot Iron, forfeit his Lands, *&c.* to the Queen for Life, and ſuffer perpetual Impriſonment.

* [*Vide* 2 *Geo.* 2. 25. & 7 *Geo.* 2. 22.]

And if any of his own Head, or by Fraud with others forge, or cauſe, or aſſent to be forged, any Charter, Deed, or Writing, to the Intent any may claim an Intereſt for Years in Lands, *&c.* not Copyhold, or an Annuity, in Fee, Tail, for Life or Lives, or Years; or any Obligation, Releaſe, or other Diſcharge of Debt, Action, *&c.* or ſhall publiſh or give in Evidence ſuch Deed, Writing, Obligation, *&c.* knowing it to be forged, being Convict as aforeſaid, ſhall forfeit double Coſts and Damages to the Party grieved, be ſett on the Pillory, *&c.* loſe one Ear, and be impriſoned for a Year without Bail, *&c.* *

* [And the ſecond Offence is made Felony, without Benefit of Clergy.]

(B) Remedy

## (B) Remedy for Forgery.

### (B. 1.) By Action.

AN Action for Deceit lies by the Common Law againſt a Forger of falſe Deeds: as, if he forges a Statute, Obligation, or other Specialty in the Name of *B.* *F. N. B.* 96. *B.* * *Vide Action upon the Caſe for Deceipt*, (A. 2.)

[* *Vide the Margin Ibid.*]

Or the Grant of a Preſentation by an Abbot under the Seal of his Convent. *F. N. B.* 96. *C.*

Or Letters of Reſignation, by a Parſon, of his Benefice. *F. N. B.* 99. *K.*

So, by the *St.* 5 *El.* 14. The Party grieved may ſue his Action of *Forger* of falſe Deeds on that Statute by Original, or by Bill in *B. R.* or in the *Exchequer.*

And in ſuch Action of *Forger &c.* ſhall have the ſame Proceſs as in Treſpaſs.

But in ſuch Action, the Plaintiff's Releaſe ſhall diſcharge only his Coſts and Damages, and the Court may proceed to Judgment and Execution for the other Penalties.

*Vide Pleader*, (2 S. 26.)

### (B. 2.) By Indictment.

*Vide Indictment*, (D.—G. 3, 5.)

So he may be indicted for Forgery, by the Common Law.

And by the *St.* 5 *El.* 14. The Juſtices of *Oyer and Terminer*, and Juſtices of Aſſiſe, in their General Seſſions, *&c.* may hear and determine the ſaid Offences, and award Proceſs, *&c.* as they may againſt any indicted before them of Treſpaſs.

But Juſtices of the Peace have no Juriſdiction of Forgery upon the *St.* 5 *El.* 14. *Cromp. Juſt.* 56. *b.* *R. Cro. El.* 87.

Nor, of Felony for the 2d Offence; for they have not the Record of the firſt Conviction before them. *Cromp. J.* 56. *b.*

Tho' they are Juſtices of Peace, and alſo of Gaol-Delivery. *R. Cro. El.* 697.

The Indictment ſhall be good, if it purſues the Words of the Statute, tho' it be improper Latin: as, if it ſays, *quod ſuper Caput ſuum proprium fabricavit*; for it is purſuant to the Words of the Statute. *R.* 2 *Lev.* 221.

So, if it alledges, that *A.* ſeiſed of *Jaywick*, *B. cum Intentione ad moleſtand falſo fabricavit Factum per quod B. conveyavit Jaywick-Park, &c.* for tho' there be a Variance in the Name of the Lands, yet the Intent to diſturb *A.* is the Fact, which the Jury ought to find, and is ſufficiently alledged. *R. F,g.* 57, 261.

But if an Indictment ſays, that ſuch a one *contrafecit ſcriptum continens in ſe Scriptum Obligatorium*, it will be bad; for it is repugnant, and impoſſible. *R.* 3 *Mod.* 104.

## FORM.

*Vide Amendment*, (D. 5.—L. 1.—W.—X.)

# FORMA PAUPERIS.

## (A) Suit in Formâ Pauperis.

BY the *St.* 11 *H.* 7. 12. Every Poor Perſon having Cauſe of Action, or Suit, ſhall have by the Chancellor a Writ Original, or *Subpœna*, without paying for Sealing or Writing the ſame. And the Chancellor ſhall aſſign Clerks to write, and Counſel and Attorny for the ſame, without Reward taking.

So ſhall the Juſtices of *B. R. C. B.* Barons of *Exchequer*, and all other Juſtices in Courts of Record, where ſuch Suit ſhall be.

And therefore, in *Chancery*, and every Court of Record, the Plaintiff having Cauſe of Suit, upon *Affidavit*, that he has not 5*l.* above the Matter in Queſtion ſhall be admitted to ſue *in Formâ Pauperis*.

And by *Ord. Cla.* No Counſel, Attorny, *&c.* aſſigned, ſhall take Fee, or agree for Recompence, *&c.* on Pain of Cenſure by the Court: nor refuſe to proſecute or defend for ſuch *Pauper*. *Vide Rules and Orders of Chancery.*

And by *Order* 18*th Nov.* 20 *Car.* 2. No *Pauper* Writs ſhall pay Fees for Sealing.

So a Woman, indicted by her Huſband for a Miſdemeanor, ſhall be admitted to defend *in Formâ Pauperis*. *Mod. Ca.* 88.

So, by the *St.* 5 & 6 *W. & M.* 21. and 9 & 10 *W.* 3. 25. He ſhall be excuſed Stamp-Duties who is admitted to ſue or defend *in Formâ Pauperis*.

So, by the *St.* 2 *Geo.* 2. 28. A Perſon arreſted on a *Capias*, or Information, relating to the Cuſtoms, making *Affidavit* before a Judge, or a Commiſſioner to take Affidavits, that he is not worth 5*l.* beſide his Wearing Apparel, if he petition to defend *in Formâ Pauperis*, the Judge in Diſcretion may admit him ſo to do; and aſſign Counſel, Attorny, or Clerk, who ſhall take no Fee, or Reward.

But by the *St.* 23 *H.* 8. 15. A Plaintiff admitted as *Pauper*, if Nonſuit, *&c.* inſtead of paying Coſts, ſhall ſuffer ſuch other Puniſhment, as the Juſtices of the Court where the Suit depends ſhall think reaſonable.

So, if he be admitted, tho' he was diſpaupered before Nonſuit. *R.* 1 *Rol.* 88.

And a *Pauper*, being nonſuited, may have Corporal Puniſhment. 1 *Rol.* 88.

And the uſual Courſe is, that Coſts are taxed, and if he does not pay, he ſhall be whipped; except where the Court in Diſcretion, (as it may,) directs that he ſhall be excuſed from both. 1 *Sid.* 261. *Sal.* 506.

By *Rule in the Exchequer* 47, A Petitioner to be admitted *in Formâ Pauperis* ſhall bring a Certificate under Counſel's Hand, that he hath probable Cauſe of Suit, and take the uſual Oath, *&c.* *Vide Rules and Orders in Exchequer.*

So, by a Rule in *B. R. H.* 3 & 4 *Jac.* 2. *Nullus admittatur in Formâ Pauperis extra Curiam.*

So, by Order in the *Exchequer* 1717, No *Pauper* is to be admitted but by Conſent of the Clerk and Counſel aſſigned to be ſtanding Counſel; and if admitted after Commencement of the Suit, the *Pauper* to give Security to pay the Coſts before Admittance.

So, if a *Pauper* contracts for the Benefit of the Suit, he ſhall be diſmiſſed, and never afterwards retained. *Per Ord. Cla. Vide Rules and Orders of Chancery.*

So, if he gives, or agrees to give a Fee or Recompence; he ſhall be diſpaupered, and never afterwards admitted. *Ord. Cla. Vide Rules and Orders of Chancery.*

So, if he gives Notice of Trial, and does not proceed. *Sal.* 506.

So, if he has an Eſtate in Poſſeſſion, tho' it be mortgaged above the Value. *Per Holt, 2 J. cont. Sal.* 507.

So, by *Ord. Cla.* Proceſs of Contempt at a *Pauper*'s Suit ſhall not be ſent to the Great Seal, till ſigned by the Six-Clerk, who ſhall take Care that it be not vexatious. *Vide Rules and Orders of Chancery.*

# FORMEDON.

*Vide Pleader*, (3 E. 1, &c.)

# FOWLING.

*Vide Juſtices of Peace*, (B. 45, 46.)

# FOWLS.

*Vide Diſmes*, (H. 9.)

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# FRANCHISES.

## (A) How they may be claimed.

### (A. 1.) What by Preſcription.

*Vide Præſcription*, (C.—D.)

ALL Franchiſes are derived from the King, and ought to be claimed by Charter, or by Preſcription, which ſuppoſes the Grant of the King. 2 *Inſt.* 281, 496. *Per Finch, Quo W.* 12. 9 *Co.* 27. *b.*

Any Thing which may be claimed without Matter of Record, may be claimed by Preſcription. *Co. L.* 114.

As, a Privilege to be a Corporation. *Co. L.* 114. *Vide Poſt*, (F. 4.)

*Tenere Placita. Co. L.* 114. *b.* 2 *Rol.* 270. *l.* 52. *Vide Courts*, (P. 1.)

To have Treaſure-Trove. *Co. L.* 114. *b. Vide Waife*, (G.)

Waifes, and Eſtrays. 5 *Co.* 109. *b. Co. L.* 114. *b. Vide Waife*, (A. 1, 2.—F.)

Wreck of the Sea. *Co. L.* 114. *b. Vide Wreck.*

A Court Leet, and other Courts. *Co. L.* 114. *b.*

Royal Fiſhes; as, Whales, Sturgeons, *&c. Co. L.* 114. *b.*

Fairs, Markets, *&c. Co. L.* 114. *b.*

Frank-foldage. *Co. L.* 114. *b.*

The Cuſtody of a Gaol. *Co. L.* 114. *b.*

So a Man may make Title to Land by Preſcription. *Co. L.* 114. *b.*

## (A. 2.) What not.

But Franchiſes and Liberties, which cannot be ſeiſed before the Cauſe of Forfeiture appears upon Record, cannot be claimed by Preſcription. *Co. L.* 114. 2 *Rol.* 270. *l.* 20. 5 *Co.* 109. *b.*

As, *Bona & Catalla Proditorum, Felonum, Felonum de ſe, Fugitivorum, Utlagatorum, vel in Exigend' Poſitorum, &c. Co. L.* 114. *a. R.* 5 *Co.* 109. *R.* 9 *Co.* 24. *b. Vide Waife,* (B.—C.—D.)

Conuſance of Pleas. *Co. L.* 114. *a. Vide Courts,* (P. 2, &c.)

Deodands. *Co. L.* 114. *a. Vide Waife,* (E. 1, 2.)

Privilege to have a Sanctuary. *Co. L.* 114. *a.*

To make a Corporation. *Co. L.* 114. *a. Vide Poſt,* (F. 1, &c.)

To make a Coroner, or Conſervator of the Peace. *Co. L.* 114.

To have Fines *pro Licentiâ Concordandi. Jon.* 271.

But a Man may claim theſe Privileges indirectly by Preſcription; for he may claim a County Palatine by Preſcription, to which *Jura regalia* belong. *Co. L.* 114. *b. Vide Poſt,* (D. 1, &c.)

## (B) Confirmed.

UPON Prayer of the Commons 21 *Ed.* 3. to the King to reſtrain the granting of Franchiſes, it was anſwered, That they ſhall be granted by good Advice. 2 *Rol.* 203. *l.* 30.

But by the *St. M. Ch.* 9 *H.* 3. 9. & 37. *Civitas Londinenſis, & omnes aliæ Civitates, Burgi, & Villæ habeant omnes Libertates & liberas Conſuetudines ſuas.*

By the *St.* 34 *Ed.* 1. 4. *De Tallagio non concedendo, Habeant ita libere, ſicut aliquo Tempore habuerunt.*

And all Liberties were afterwards confirmed by the *St.*ˢ 1 *Ed.* 3. 9. 14 *Ed.* 3. 1. the *St.*ˢ 1 *H.* 4. 1. 2 *H.* 4. 1. 7 *H.* 4. 1. 9 *H.* 4. 1. 13 *H.* 4. 1. the *St.* 3 *H.* 5. *St.* 2 *Ch.* 1. the *St.* 2 *H.* 6. 1.

## (C) Allowed in Eyre.

FRANCHISES, which do not lie in Preſcription, but are only allowable by Charter, if the Grant was before Time of Memory, *viz.* before the Time of King *R.* 1, may be claimed by Charter of Confirmation, or Allowance in *Eyre, B. R. C. B.* or *Exchequer*, without ſhewing the Original Grant. 2 *Inſt.* 281. 9 *Co.* 28. *a.* 2 *Rol.* 201. *l.* 5, 10.

And without ſuch Confirmation, or Allowance, they cannot be claimed. 2 *Rol.* 200. *l.* 40, 45. 1 *Rol.* 112. *Jon.* 284, 289.

So a Grant of Diſcharge, or Exemption, before Time of Memory, ſhall be of no Effect, without a Confirmation or Allowance; tho' it has never ſince been charged. 2 *Rol.* 200. *l.* 50.

An Allowance in *Eyre* is peremptory to the King. 2 *Rol.* 201. *l.* 20.

Not in *B. R. &c.* if the Grant afterwards appears to be illegal. 2 *Rol.* 201. *l.* 23.

An antient Charter, if the Words are general, or obſcure, ſhall be conſtrued according to antient Allowance. 2 *Inſt.* 282. 9 *Co.* 28. *a.*

Or according to the Import of the Words when the Charter was made, and ſubſequent Uſage. 2 *Inſt.* 282.

If

If a Charter of Liberties pleaded before Juſtices in *Eyre*, or of the Foreſt, be delayed to be allowed; a Writ lies *de Libertatibus allocandis*. *F. N. B.* 229. *B.*

And it may be ſued by a Corporation, or by a ſingle Perſon. *F. N. B.* 230.

By the *St.* 3 (or 3 & 4) *Ed.* 6. 4. & 13 *El.* 6. If a Charter be loſt, Shewing an Exemplification or *Conſtat* of the Roll, is ſufficient. 2 *Inſt.* 282.

But if the Charter be within Time of Memory, there needs no Confirmation, or Allowance. 9 *Co.* 28. *a.*

So a Thing which may be claimed by Preſcription needs not any Confirmation, or Allowance. *Cont.* 2 *Inſt.* 281. *Acc.* 9 *Co.* 28. *a*, *Strata Marc. Kit.* 30. *b.*

## (D) County Palatine.

### (D. 1.) What ſhall be.

THE higheſt Franchiſe is a County Palatine.

A County Palatine is ſo called *a Palatio Regis*, becauſe the Count has *Jura Regalia* within his County as fully as the King himſelf, from whom all Juſtice, Honour, Dignity, Franchiſes, and Privileges were at firſt derived. 4 *Inſt.* 204. *Dav.* 60.

And the County is made a *County* Palatine; not the Perſon, a *Count* Palatine. 4 *Inſt.* 205.

It may be by Preſcription, or by Parliament.

So the King may create a County Palatine. *Dav.* 61.

In *England*, *Cheſter*, *Durham*, and *Lancaſter*, are Counties Palatine. *Dav.* 61. *b.* Of which, *Vide Poſt*, (D. 3, 4, 5, 6, 7.)

In *Ireland* three Counties Palatine were created *Temp. H.* 2. (1.) The Province of *Leinſter*, granted to Earl *Strongbow*, which afterwards deſcended to five Daughters, who, upon Partition, had each a County by itſelf, which was a County Palatine. *Dav.* 61. *b.* (2.) The Province of *Meth.* (3.) The Province of *Ulſter*. *Dav.* 61. *b.*

### (D. 2.) The Dignity.

The Authority of him, who had a County Palatine, was as full, as the Authority of the King himſelf, within his County Palatine. 4 *Inſt.* 205.

And conſiſted in a Royal Seigniory, and Royal Juriſdiction. *Dav.* 62. *a.*

In a County Palatine, the Juſtices in *Eyre*, of Aſſiſe, of Gaol-Delivery, of the Peace, *&c.* were made by Commiſſion under Seal of the Count Palatine. 4 *Inſt.* 205. till by the *St.* 27 *H.* 8. 24. the Power was reſumed, and recontinued to the King.

All Original and Judicial Writs, and all Indictments there for Treaſon, or Felony, were in his Name, till the *St.* 27 *H.* 8. 24. enacted, that they ſhould be in the Name of the King, and teſte'd in the Name of the Count. 4 *Inſt.* 205.

And, till the ſame Statute, an Indictment ought to be *contra Pacem* of the Count, and now *contra Pacem Regis*. 4 *Inſt.* 205.

So, till the ſame Statute, the Count Palatine might pardon Treaſon, Felony, *&c.* 4 *Inſt.* 205.

So the Count Palatine might make a Tenure *in Capite*, by Grand Serjeanty, *&c.* *Dav.* 62. *b.*

And Barons within the ſame County. 4 *Inſt.* 211. *Dav.* 62. *b.*

## (D. 3.) The County Palatine of *Lancaſter*.

The County Palatine of *Lancaſter* was erected by Act of Parliament 50 *Ed.* 3. and granted to *John* Duke of *Lancaſter*, his Son, for Life; *& quod habeat Concellariam ſuam, ac Brevia ſua ſub ſigillo ſuo, Deputando Juſticiarios ſuos tam ad Placita Coronæ, quam alia Placita quæcunque ad Communem Legem; ac Cognitionem, & Executionem, &c. per Brevia & Miniſtros ſuos faciend'; & quæcunque al' Libertates ac Jura Regalia ad Comitatum Palatinum pertinent', adeo libere ſicut Comes Ceſtriæ, &c.* 4 *Inſt.* 204. *Dav.* 62. 1 *Vent.* 157.

And therefore, the King ſhall have the ſame Prerogative, where he is ſeiſed in Right of the Dutchy of *Lancaſter*, as where he is ſeiſed in Right of the Crown. *Cro. El.* 240.

But King *H.* 4. by Charter in Parliament directed, that all Poſſeſſions of the Dutchy ſhould remain as before. *Pl. Com.* 214.

And by the *St.* 1 *Ed.* 4. All Poſſeſſions, which King *H.* 6. had the 3d of *March* preceding, are veſted in and annexed to the Crown, as forfeited for High Treaſon, and by the ſame Act are created to be the Dutchy of *Lancaſter*, and the County of *Lancaſter* is made a County Palatine, and Parcel of the ſaid Dutchy; and the King ſhall have a Seal, Chancellor, and other Officers for the County Palatine, and others for the Dutchy, and they ſhall be managed ſeparately from other Poſſeſſions of the King. *Pl. Com.* 219.

By the *St.* 27 *H.* 8. 11. *S.* 6. All Leaſes of the King's Manors, Lands, *&c.* in the County Palatine of *Lancaſter*, or of the Dutchy of *Lancaſter* out of the County Palatine, *&c.* ſhall paſs under the Seals of the Dutchy of *Lancaſter*, or of the County Palatine, as heretofore uſed. *Vide Patent*, (C. 4.)

So, by the *St.* 27 *H.* 8. 24. *S.* 5. Juſtices of Aſſiſe, Gaol-Delivery, and Peace, made by the King in the County Palatine of *Lancaſter*, ſhall be by Commiſſion under the King's uſual Seal of *Lancaſter*.

By the *St.* 37 *H.* 8. 19. Fines of Lands in the County Palatine of *Lancaſter*, before Juſtices of Aſſiſe at *Lancaſter*, ſhall be of equal Force as Fines in *C. B.*

And Fines and Recoveries ought to be levied there, of Lands within the County Palatine, and not at *Weſtminſter*. 4 *Inſt.* 205.

And therefore, Juſtices of Aſſiſe, Gaol-Delivery, and the Peace, are always aſſigned by the King for the County Palatine of *Lancaſter*, by Commiſſion under the Seal of the County Palatine. 4 *Inſt.* 205.

So the King has a Court of Equity, for Matters of Equity ariſing within the County Palatine of *Lancaſter*. 2 *Lev.* 24. And this was allowed by the *St.* 50 *Ed.* 3.

So the Dutchy-Court at *Weſtminſter* may examine Matters of Equity, ariſing out of the County Palatine of *Lancaſter*, within the Dutchy of *Lancaſter*. 2 *Lev.* 24.

So, by Uſage, ſince the Time of *H.* 5. for Matters of Equity in the County Palatine of *Lancaſter*. *Semb.* 2 *Lev.* 24.

The Proceſs in the Dutchy-Court, ſhall be by Privy-Seal, Attachment, *&c.* as in *Chancery*. 4 *Inſt.* 206.

The Officers there are the Chancellor, Attorny, Receiver-General, Clerk, Auditors, Surveyors, Meſſenger. 4 *Inſt.* 206.

And four Council Aſſiſtants and Council to the Court. 4 *Inſt.* 206.

But Lands held of the Dutchy are not, without more, within the County Palatine. *Semb. Skin.* 43.

## (D. 4.) The County Palatine of *Cheſter*.

The County Palatine of *Cheſter* is by Preſcription. 4 *Inſt.* 211. *Dav.* 62. 1 *Vent.* 157.

*Hugh Lupus* had the County of *Cheſter* granted to him by *William* the Conqueror, *Tenendum ſibi & Hæredibus ita libere ad Gladium, ſicut ipſe Rex tenebat Angliam ad Coronam.* 4 *Inſt.* 211.

By this general Grant, he had *Jura Regalia*, and a County Palatine. 4 *Inſt.* 211.

And the City of *Cheſter*, tho' a County of itſelf, is Part of the County Palatine. 4 *Inſt.* 212.

But the Biſhoprick of *Cheſter* was held of the King, and the Poſſeſſions not within the Grant. 4 *Inſt.* 211.

D. 5.) The Chamberlain.

In the County Palatine of *Cheſter*, the Chamberlain of *Cheſter* has a Court of Equity held at the *Exchequer* there; and he is in the Nature of a Chancellor. 4 *Inſt.* 211, 212.

Alſo he ſhall be a Judge of Matters at Common Law in the ſame County, as in the *Chancery* at *Weſtminſter*. 4 *Inſt.* 211.

And he has a Deputy, called the Vice-Chamberlain. 4 *Inſt.* 211.

And all Proceſs to the County Palatine ſhall be directed to the Chamberlain, commanding him, that he command the Sheriff to execute it. 2 *Lev.* 111.

If an Information be for a Fact in the County of the City, there ſhall be a *Mittimus* to the Chamberlain, commanding that he ſend it to the Mayor, and after Trial, take it back, and remit it to the Court. 2 *Mod. Ca.* 328.

(D. 6.) The Chief Juſtice.

So within the County Palatine of *Cheſter*, the Chief Juſtice of *Cheſter* has Juriſdiction of all Pleas of the Crown, and Common Pleas. 4 *Inſt.* 211.

So, before him, Fines and Recoveries may be ſuffered. 4 *Inſt.* 211.

And by the *St.* 2 & 3 *Ed.* 6. 28. a Fine before him, being proclaimed three ſeveral Days, at three ſeveral Seſſions, ſhall be of the ſame Effect as a Fine at *Weſtminſter*.

If Error be of a Fine in *Cheſter*, it ſhall be directed to the Chief Juſtice, *vel ejus Locum Tenenti*, and not to the Chamberlain. *Dy.* 320. *b.*

So Records of the Courts of *Weſtminſter*, for Trial there, ſhall be tranſmitted to the Juſtices of Aſſiſe, not to the Chamberlain. *R.* 2 *Lev.* 111.

So Error to reverſe Judgments in *Cheſter*, ſhall be in a ſpecial Manner. *Dy.* 345. *b.* 4 *Inſt.* 214.

But this does not extend to Error in Fact. *Dy.* 345. *b.* 4 *Inſt.* 214.

Nor to Error upon a Fine. 4 *Inſt.* 214.

Or to reverſe an Outlawry. *R. Sal.* 500.

By the *St.* 1 *H.* 4. 18. If a Perſon of the County of *Cheſter* commit Felony, Battery, or other Treſpaſs out of that County, and then flee into *Cheſter*, Proceſs ſhall go to the *Exigend*, in the County where the Offence was done, and then the Outlawry ſhall be certified to the Officers of the County of *Cheſter*, and the Offender, and his Lands there ſeiſed for the Lord of *Cheſter*, ſaving to the King, Year, Day, and Waſt; and his Lands elſewhere ſhall remain in the King.

So, by the *St.* 43 *El.* 15. A Fine of Lands in the County of the City of *Cheſter*, may be levied before the Mayor of *Cheſter*, in the ſame Manner as before the High Juſtice of *Cheſter*; but Error thereon lies before the Chief Juſtice of *Cheſter*.

And *by the ſame Stat.* he may iſſue a *Dedimus Poteſtatem* to take Fines, or to make Attornies in a Common Recovery.

## (D. 7.) The County Palatine of *Durham.*

So the County of *Durham*, being Parcel of the Biſhoprick of *Durham*, is a County Palatine by Preſcription. 4 *Inſt.* 216. *Dav.* 62. *b.*

And has it's *Chancery*, and Juſtices. *Dav.* 62. *b.* 1 *Bul.* 160.

By the *St.* 27 *H.* 8. 24. *S.* 21. The Biſhop of *Durham*, and his Chancellor, ſhall be Juſtices of Peace in the County Palatine of *Durham.*

So he has *Jura Regalia*, by Preſcription, in all Places between *Tine* and *Teeſe.* 1 *Rol.* 399.

And he ſhall have the Eſcheat of his Tenant for Treaſon, if the Eſtate be not entailed, where there is a Forfeiture by the *St. H.* 8. 1 *Rol.* 400.

And he ſhall preſcribe for the Goods of Felons, or of Felons of themſelves. *R. in a Quo W.* 1 *Rol.* 399, 400. 2 *Bul.* 226.

And before the *St.* 27 *H.* 8. 24. he might pardon all Treaſons and Felonies within his County. 1 *Bul.* 160.

And a Recovery in *C. B.* for Lands in the County of *Durham* ſhall be void. 1 *Bul.* 160.

So it is ſufficient to preſcribe for Franchſes not granted, by ſaying, that it is a County Palatine, and has *Jura Regalia, & ratione inde* he claims ſuch Franchiſes. *R.* 2 *Bul.* 226, 7.

## (D. 8.) *Ely, &c.*

*Ely* is called a County Palatine by the *St.* 33 *H.* 8. 10. and the *St.* 5 *El.* 23.

The King 10 *H.* 1. erected the Cathedral of *Ely* out of the Monaſtery there, and the Biſhoprick out of the Abby; and granted the County of *Cambridge*, before within the Dioceſe of *Lincoln*, for his Dioceſe. 4 *Inſt.* 220.

To the Biſhop and his Succeſſors the King granted *Jura Regalia* within the Iſle of *Ely*; by which Grant, and by Preſcription founded thereon, the Biſhop has a Royal Juriſdiction before his Juſtice *de Placitis Coronæ, & de Communibus Placitis.* 4 *Inſt.* 220.

But *Ely* is only a Royal Franchiſe, and not a County Palatine. *Carth.* 109.

And therefore, if there be an Action in a Court of *Weſtminſter*, for a Matter ariſing there; the Defendant cannot plead to the Juriſdiction of the Court: But the Biſhop may demand Conuſance of the Plea. *R. Carth.* 109.

And an Action there for Lands in *Ely* is not void, as it would be in a County Palatine. *Carth.* 109.

So the County of *Pembroke* in *Wales* was a County Palatine; but the Juriſdiction is ouſted by the *St.* 27 *H.* 8. 26. 4 *Inſt.* 221.

So *Hexham* was claimed by the Archbiſhop of *York* as a County Palatine; but 14 *El.* it was determined to be Part, and within the ſame Juriſdiction as the other Part, of the County of *Northumberland.* 4 *Inſt.* 222.

## (D. 9.) The Juriſdiction of a County Palatine.

A County Palatine has Juriſdiction of all Pleas of Lands and Tenements lying within the County Palatine, which ought to be determined there, and not elſewhere. *R.* 4 *Inſt.* 212.

So,

So, of Contracts, and all Matters and Cauſes which ariſe within the County Palatine. 4 *Inſt.* 212.

And therefore, if Real Actions for Land within a County Palatine, are brought in the Courts at *Weſtminſter*, it may be pleaded to the Juriſdiction of the Court; except in Error, Foreign Plea, or *Voucher*. 4 *Inſt.* 212. *Vide Abatement*, (D. 2.)

So, in Perſonal Actions, if the Matter be alledged within a County Palatine. 4 *Inſt.* 213.

In Debt upon a Bond, *&c.* which appears by the Date to be made in a County Palatine. *Sav.* 35.

So an Inhabitant of a County Palatine cannot be ſummoned out of it, except in Caſe of Treaſon, or Error, by any Writ or Proceſs. 4 *Inſt.* 412.

So Proceſs or Writ uſed there ought to be under the Seal of the County Palatine. 4 *Inſt.* 212.

So an Office, found upon a Writ or Commiſſion for Land there, if it be not out of the *Exchequer* there, ſhall be void. 4 *Inſt.* 213.

If there be Judgment in a Real Action for Land which lies in a County Palatine, it is void, tho' there was no Plea to the Juriſdiction; for the Court takes Notice of every County, and County Palatine. 2 *Inſt.* 557.

But a County Palatine ſhall not have Juriſdiction, where the Judge himſelf is a Party. 4 *Inſt.* 213. *R.* 12 *Co.* 114. 1 *Rol.* 246.

So a tranſitory Action may be alledged out of a County Palatine, and may be brought in a Court of *Weſtminſter*, tho' the Cauſe of Action aroſe within the County Palatine. 4 *Inſt.* 213. *R.* 12 *Co.* 114. *R.* 1 *Sid.* 309. *Sav.* 35.

Tho' the Party alſo reſides in the County Palatine. *R.* 1 *Sid.* 103. *R.* 2 *Rol.* 318. *l.* 15.

So, if the Party lives out of the County Palatine, he may be ſued for Land or Goods within it, at a Court of *Weſtminſter*. 4 *Inſt.* 213. *R.* 12 *Co.* 114.

So an Ejectment may be in *B. R.* for Lands there, when the Defendant is *in Cuſtod. Mar'*. *Dub.* 1 *Sid.* 168. *Ray.* 81. *Carth.* 12.

So, if the Action alledges the Fact in a County Palatine, after a Plea in Bar the Defendant ſhall not have Advantage of it. *R. Carth.* 11.

Nor, if the Defendant demurs to the Declaration. *R. Carth.* 355.

So Error lies in *B. R.* upon a Judgment given in a County Palatine. 4 *Inſt.* 212. *Vide Pleader*, (3 *B.* 3.)

So, if a Suit be againſt *A.* who lives in a County Palatine, by the Executors of *B.* upon an Obligation, in *C. B.* upon which *A.* ſues in the *Exchequer*, which is a Court of Equity, in *Cheſter*, where one Executor dwells, the other in *London*; he cannot ſerve Proceſs upon him in *London*. *R. Hut.* 59.

So a *Fieri facias* lies to a County Palatine, upon a Judgment in *B. R.* againſt him who dwells there. *R.* 1 *Lev.* 256.

So a Suit in Equity, in the Dutchy of *Lancaſter*, ought to ſhew the Lands in Queſtion to be within the Juriſdiction. *Eq. Ca.* 95. *

* 2d Part of 2 *Mod. Ca.*

## (E) The Cinque-Ports.

### (E. 1.) What Privileges they have.

THE Franchiſe of the *Cinque-Ports* is claimed, in Part by Preſcription, in Part by Act of Parliament, and Charter, and has been Time out of Mind, *&c.* 4 *Inſt.* 223.

In

In the Time of *Edward* the Confeſſor there were but three Ports, *Dover*, *Sandwich*, and *Romney*; but in the Time of *William* the Conqueror, *Haſtings*, and *Hithe* were added; and 1° *Joh. Winchelſea*, and *Rye*: Yet they are called the *Cinque-Ports*. 4 *Inſt.* 222. 2 *Inſt.* 556.

So the King, by Patent, may make any Town a Member of the *Cinque-Ports*. *Hard.* 56.

The *Cinque-Ports* are Part of the County of *Kent*, and tho' they have not *Jura Regalia*, yet they have many Privileges, which were confirmed by the *St. M. Ch.* 9. 4 *Inſt.* 223.

And therefore, have all Juriſdiction in all Actions Real, Mixt, and Perſonal, which ariſe within the *Cinque-Ports*. 4 *Inſt.* 224.

If an Action be brought in *B. R. &c.* for a Matter which ariſes there, it may be pleaded generally in Abatement. *Vide Abatement*, (D. 3.)

And Error does not lie in *B. R.* or *C. B.* on a Judgment given there. 2 *Inſt.* 557.

But a Judgment in *B. R.* or other Court of the King, is good, if the Privilege of the *Cinque-Ports* be not pleaded. 4 *Inſt.* 223. 2 *Inſt.* 557.

And ſuch Judgment does not deſtroy their Privilege afterwards. 2 *Inſt.* 557. 4 *Inſt.* 223.

And *B. R.* cannot take Notice judicially, what Towns are within the *Cinque-Ports*. 2 *Inſt.* 557.

So Prerogative-Writs, as *Habeas Corpus*, *Mandamus*, *&c.* run to the *Cinque-Ports*. *R.* 2 *Cro.* 543.

So an Appeal lies in *B. R.* for a Murder in the *Cinque-Ports*. *R. Yel.* 13. *Cro. Car.* 247.

So a *Certiorari* lies to remove an Indictment for Felony in the *Cinque-Ports*. *R. Cro. Car.* 253, 264, 291.

## (E. 2.) What Courts.

Within the *Cinque-Ports* there are ſeveral Courts: a Court before the Mayor and Jurats of each Port; a Court before the Conſtable of the Caſtle of *Dover*; and a Court of the *Cinque-Ports apud Shepway*. 4 *Inſt.* 223.

The Court before the Mayor and Jurats is a Court of Record. 2 *Inſt.* 557.

The Court before the Conſtable of the Caſtle of *Dover* holds Plea by Bill, according to the Courſe of the Common Law, of Things which concern the Guard of the Caſtle. 2 *Inſt.* 557. *F. N. B.* 240. *B.*

But by the *St. Art. ſuper Chart.* 7. No foreign Plea of the County ſhall be pleaded, which does not touch the Guard of the Caſtle.

Nor ſhall the People of the *Cinque-Ports* be diſtrained to plead elſewhere, or in other Manner than they ought, according to the antient Charters or Franchiſes affirmed by the Great Charter. 2 *Inſt.* 556.

The Court of the *Cinque-Ports apud Shepway* was created by Letters Patent *Temp. Ed.* 1. 4 *Inſt.* 224. But muſt have been confirmed by Parliament. 2 *Inſt.* 557.

And an erroneous Judgment before the Mayor and Jurats in any Port, ſhall be redreſs'd there. 4 *Inſt.* 224. 2 *Inſt.* 557. *R. Dy.* 376. *a.*

And that, by Bill in the Nature of a Writ of Error, without any Writ. 2 *Inſt.* 557.

And upon Reverſal, the Mayor and Jurats ſhall be fined, and the Mayor removed from his Office. 2 *Inſt.* 557. *Dy.* 376. *a.*

### (E. 3.) How a Writ to the *Cinque-Ports* is directed.

A Writ to the *Cinque-Ports* to remove a Record of a Judgment there, ſhall be directed to the Conſtable of *Dover*, who is the immediate Officer to *B. R.* and he ſhall write to the Barons to certify to him, and ſhall then ſend it to the Court. 30 *H.* 6. 6. *Vide infra.*

But if an Indictment be before them as Juſtices of Peace, or of *Oyer* and *Terminer*, a *Certiorari* to remove it need not be to the Warden of the *Cinque-Ports*; but to the Mayor and Jurats before whom it was taken. *R. Cro. Car.* 252, 264.

The Warden of the *Cinque-Ports* is an Officer, who has been appointed, Time out of Mind, *&c.* for the Cuſtody of the *Ports*. 4 *Inſt.* 223.

And he has the Juriſdiction of Admiral within the *Cinque-Ports*, exempt from the Admiralty of *England*. 4 *Inſt.* 223. 2 *Inſt.* 556. 2 *Jon.* 67. *Sr. L. Jenk.* 1 *Vol.* 85.

So he ſhall be Conſtable of the Caſtle of *Dover*. 4 *Inſt.* 223. 2 *Inſt.* 556.

The Conſtable of *Dover* and Warden of the *Cinque-Ports* is the immediate Officer to the King's Courts, for all Matters within the *Cinque-Ports*: and therefore, a Writ ſhall be directed to him to certify a Record there. 4 *Inſt.* 223.

Tho' it be in another Port; for he ſhall ſend for it to the Barons of the *Cinque-Ports*, and tranſmit it to the King's Court. 4 *Inſt.* 223. *Vide ſupra.*

So, if a Defendant, againſt whom Judgment is in *B. R. &c.* has no Land but in the *Cinque-Ports*, there ſhall be a Writ to the Conſtable of *Dover*, to make Execution. 4 *Inſt.* 223. *R.* 1 *And.* 28. 3 *Leo.* 3.

If Surety of the Peace be demanded in *Chancery*, againſt any within the *Cinque-Ports*, there ſhall be a Writ to him, to take it. 4 *Inſt.* 223.

## (F) Corporation.

### (F. 1.) What ſhall be.

A Corporation is a Franchiſe created by the King.

A Corporation is a Body conſtituted by Policy, with a Capacity to take, or to do. *Co. L.* 250. *a.*

For by Incorporation it acquires *Jus Perſonæ*, and becomes *Perſona politica*, and is capable of all Civil Rights *habendi, & agendi*. *Per Att. Gen. Quo W.* 3. 8.

A Corporation is Eccleſiaſtical, or Lay; and both are Sole, or Aggregate. *Co. L.* 250. *a.*

An Eccleſiaſtical Corporation Sole is Regular; as, an Abbot, Prior, *&c. Co. L.* 250. *a.*

Or Secular; as, a Biſhop, Dean, *&c. Co. L.* 250. *a.*

An Eccleſiaſtical Corporation Aggregate conſiſts of an Head and Body, who are all Perſons capable; as, a Dean and Chapter; Or the Head only is capable, and the others incapable in Law; as, an Abbot and his Convent, *&c.*

So a Lay-Corporation is Sole; *

Or Aggregate; as, a Mayor and Commonalty. 10 *Co.* 29. *b.*

* [As, the King; the Chamberlain of *London*, *&c.* 10 *Co.* 29. *b.* 4 *Co.* 65. *a.* *Cro. El.* 464.]

## (F. 2.) How created.

A Corporation is by the Common Law, by Act of Parliament, by Preſcription, or by Charter. *Co. L.* 250. *a.* (F. 2.) By the Common Law.

By the Common Law; as, the King. 10 *Co.* 29. *b.*

So a Corporation may be created by Act of Parliament. 10 *Co.* 29. *b.* (F. 3.) By Parliament.

So an antient City or Borough may claim to be a Corporation by Preſcription. 10 *Co.* 29. *b.* (F. 4.) By Preſcription.

A Corporation by Preſcription may preſcribe by ſeveral Names. *Per Hale, Hard.* 504.

To a Corporation by Charter there are requiſite, 1. An Authority to make it. 2. Sufficient Words. 3. Perſons to be incorporated. 4. A Name. 5. A Place. *R.* 10 *Co.* 29. *b.* (F. 5.) By Charter. Who may make it.

The King alone has Authority to make a Corporation by his Charter. 10 *Co.* 33. *b.* 1 *Rol.* 512. *l.* 27. *Per Att. Gen. Quo W.* 8.

And therefore, a Preſcription by a Subject, or a Corporation, to make another Corporation, is void. *Bro. Corporation* 45. 1 *Rol.* 512. *l.* 35.

So, if the King grants Power to another to make a Corporation, it is void, except when it may commence upon the Charter, or Grant of the King, and not by the Power conferred upon the other by ſuch Grant. 49 *Aſſ.* 8. *Dub. Bro. Corporation* 45. *Th. D. lib.* 1. *c.* 22. *S.* 26. *Acc.* 10 *Co.* 33. *b.*

So the Pope, tho' he uſurped very great Authority, never could make a Corporation. *Jon.* 184. *Bro. Corporation* 34.

So the Corporation of *London*, tho' it's Privileges are confirmed by Parliament, cannot make another Corporation. 1 *Sal.* 192.

But a Subject may chuſe the Perſons, invent the Name, *&c.* for the King. 1 *Rol.* 512. *l.* 30.

So a Corporation may make a Fraternity, or Company, within themſelves. 1 *Sal.* 192.

So the King, by Charter to the *Eaſt-India-Company*, *&c.* may enable them to conſtitute ſuch Perſons, who ſhall be incorporated.

There need not any preciſe Words to make a Corporation. *R.* 10 *Co.* 30. *b.* (F. 6.) By what Words.

And therefore, if the Words, *fundo*, *erigo*, *ſtabilio*, *&c.* be wanting, it is not material. 10 *Co.* 28. *a.* 1 *Rol.* 513. *l.* 7.

Antiently if the King had granted to a Vill *Gildam Mercatoriam*, it was, by ſuch Grant, incorporated. 1 *Rol.* 513. *l.* 10. 10 *Co.* 30. *a*, *Sutton's Hoſp.*

So, if the King grants to a Vill to be quit of Toll, it is incorporated for this Purpoſe. 1 *Rol.* 513. *l.* 22.

Or, if he grants Lands to them, they have thereby a Corporate Capacity to take, if a Rent be reſerved. 1 *Rol.* 513. *l.* 40. *Adm. Cro. El.* 35.

Or, if he gives Licence to grant Lands to them. 1 *Rol.* 513. *l.* 13.

Yet a Grant of Land to a Vill, does not give Capacity to take, if a Rent be not reſerved; for the Grant ſhall be void. 1 *Rol.* 513. *l.* 20.

And a Grant of Land, rendring Rent, does not give a Capacity to alien the ſame Land. *R. Cro. El.* 35.

A Corporation may be conſtituted of Perſons Natural, or Political. 10 *Co.* 29. *b.* (F. 7.) What Perſons.

It may be compoſed out of another Corporation. 1 *Rol.* 512. *C.* If the other be a Corporation by Preſcription. 1 *Sid.* 291.

So a Corporation Aggregate may be made without a Head. *Bro. Corporation* 43. *R.* 10 *Co.* 30. *b.*

(F. 8.) Place.

A Corporation ought to be conſtituted of ſome Place. 10 *Co.* 23.

And tho' the Place be not in Reality in *England*, it ought to be mentioned as in *England*; as, the Corporation of *St. John* of *Jeruſalem* in *England*. 10 *Co.* 32. *b.* 1 *Rol.* 512. *D.*

So, if it be named of any Place, it is ſufficient, tho' it has not any Lands or Poſſeſſions there. *Jon.* 168.

(F. 9.) Name. *Wide Capacity*, (B. 5.)

A Corporation ought to have a Name; which is in the Nature of a Name given to a Natural Perſon by Baptiſm. 10 *Co.* 29. *b.*

But the Name of an *intended Hoſpital*, is ſufficient. 10 *Co.* 32.

So, if the Name be implied by the Charter, it is ſufficient, tho' no Name be given by expreſs Words: as, if the King incorporates the Inhabitants of *D.* with Power to chuſe a Mayor; the Name of *Mayor and Commonalty* will be ſufficiently expreſſed. *Per Holt*, 1 *Sal.* 191.

So a Corporation by Preſcription may have different Names. *Per Hale*, *Hard.* 504.

And in Pleading, ſhall ſay, that it was known as well by the one Name, as the other. *Lut.* 1498.

So, by Charter, a Corporation may be incorporated by one Name, and afterwards by another.

And after the Change of Name, the laſt ought to be uſed. 1 *Rol.* 512. *l.* 55.

So a Change of Name, or new Charter, does not merge the antient Privileges. *R. Mo.* 581, 2. *R.* 4 *Co.* 87. *b.* *R.* 1 *Sand.* 344. *R. Ray.* 439. *Bro. Corporation* 38.

And therefore, it ſhall retain the Poſſeſſions which it had before. 1 *Rol.* 513. *l.* 2.

Shall recover a Debt, *&c.* due before. 3 *Leu.* 237.

So it ſhall be ſubject to Obligations, Annuities, *&c.* as before. *Bro. Corporation* 3, 61.

But they ought to preſcribe by their antient Name till ſuch a Day, and ſhew how it was then changed; and not by their laſt Name. *Hard.* 504. *Lut.* 1498.

## (F. 10.) What Things are incident to a Corporation.

A Corporation being erected, it has as Incident, without Words in the Charter, Power to purchaſe, and alien. 10 *Co.* 30. 1 *Rol.* 513. *l.* 35.

To plead, and be impleaded. 10 *Co.* 30. *b.* 1 *Rol.* 513. *l.* 35.

To make a Common Seal. 10 *Co.* 30. *b.*

To chuſe Members in the Place of others dead, or removed. *R.* 1 *Rol.* 514. *l.* 5. *D. Ca. Parl.* 45.

To take a Reſignation of any Member. *Cont.* 12. *Jac. R. acc.* 15 *Jac.* 2 *Rol.* 456. *l.* 10. *Per Hale*, 1 *Sid.* 14. *Acc.* 11 *W.* 3. *in B. R. Sal.* 433. upon a Return of a *Mandamus* to the Mayor of *Rippon*.

So it has a Power as Incident, to make By-Laws. 10 *Co.* 31. *a.* *Per Holt*, *T.* 11 *W.* 3.

## (F. 11.) What it may do.

A Corporation may purchaſe, and take in Succeſſion. *Co. L.* 2. 250. *a.* *Vide Poſt*, (F. 15, 16, 17.)

Or make an Alienation, under the Common Seal, in Fee, for Life, or for Years. 1 *Sid.* 162. *Vide Poſt*, (F. 18.)

So an Act by the Major Part, corporately aſſembled, is the Act of the whole Corporation. *Per Att. Gen. Quo W.* 32. *R. Dav.* 47, 48. *Ca. Parl.* 29.

If aſſembled in a convenient Place; tho' not in the Chapter-houſe, *&c.* *R. Dav.* 48.

By the *St.* 33 *H.* 8. 27. By the Common Law, all Aſſents, Elections, Grants, and Leaſes by the Dean, *&c.* or other Governor of a Cathedral, Hoſpital, College, or Corporation, with the Aſſent of the greater Part of the Chapter, Fellows, *&c.* are as good as if all had agreed: And all Orders, Statutes, *&c.* by the Founder, *&c.* That ſuch Aſſent, Election, *&c.* ſhould be hindred by one, or more, being the leſſer Number of ſuch Corporation, made, or to be made; and Oath for the Obſervance, *&c.* ſhall be void.

So a By-Law for the publick Good, made by the major Part, binds All. *R.* 5 *Co.* 63.

But the major Part ought to give their Votes *diſtinctè*, and not by Proxy. *R. Dav.* 47, 48.

So, if the Statutes of a College, *&c.* require a Licence for Abſence to be by the Wardens, 3 Burſers, 5 Deans, and 5 Senior Fellows, the Major Part is not ſufficient, but it ought to be by All; for it is not within the *St.* 33 *H.* 8. 27. which extends only to Acts that concern the whole Corporation. *R. Dy.* 247.

So, where a By-Law is not good without a Cuſtom, the Major Part does not bind, if it be not warranted by the ſame Cuſtom. 5 *Co.* 63.

## (F. 12.) How act.

(F. 12.) By Attorny.

A Corporation Aggregate can do Nothing but by Attorny. *Co. L.* 66. *b.*

It ought to appear by Attorny; for if All appear in Perſon, it is not ſufficient. *Bro. Corporation* 28. *Vide Poſt*, (F. 19.)

It ought to acknowledge a Deed, or levy a Fine, by Attorny. 1 *Leo.* 184. *Mo.* 591.

Any natural Perſon may be an Attorny for a Corporation.

Tho' he be a Member of the ſame Corporation. *Bro. Corporation* 4.

A Corporation may make a Leaſe, and ſeal it, and afterwards make a Letter of Attorny to enter, and deliver the Leaſe. *R.* 2 *Leo.* 97. *R.* 1 *Vent.* 257.

So, if there be an Uncertainty of Place, as, if a Corporation purchaſes a Carve in ſuch a Waſt, there ſhall be firſt an Election of the Place, with the Abuttals, and afterwards a Letter of Attorny for Entry thereon. 1 *Leo.* 30.

If it makes an Attorny to collect it's Rents, and to enter; if it would avoid a Leaſe for Non-Payment afterwards, it ought to make an Attorny to enter, *de novo*. *Per Holt, Skin.* 413.

So a Corporation may acknowledge a Deed before a Judge, in the Chapter-houſe, without Attorny. *R. Mo.* 676.

Or put the Common Seal to a Deed. *Mo.* 676.

So a Corporation, with it's Head, may give a perſonal Command without Attorny.

(F. 13.) By Deed.

So a Corporation Aggregate can do nothing but by Deed under the Common Seal. *Bro. Corp.* 34.

As, it cannot make a Feoffment, or Demiſe, or give a Licence. *Bro. Corp.* 50, 51. 1 *Vent.* 48.

Nor enter for a Forfeiture, or into Lands purchaſed. *R.* 1 *Rol.* 514. *K. Bro. Corp.* 50. *cont.* 96. 1 *Leo.* 30. 2 *Cro.* 110. 1 *Vent.* 48.

Nor preſent to a Benefice. *Bro. Corp.* 34, 83.

So it cannot be a Diſſeiſor, or Treſpaſſer, without an Agreement by Deed. *Bro. Corp.* 48, 50.

Nor authorize one to appear as it's Bailiff in an Aſſiſe. 1 *Vent.* 48.

But a Corporation, which has a Head, may give a perſonal Command and do ſmall Acts, without Deed: as, it may retain a Servant, a Cook, Butler, *&c.* *Dub. Bro. Corp.* 47. *acc.* 49, 50, 56. 1 *Vent.* 47.

It may authorize another to drive Cattle, kindle a Fire, *&c.* *Bro. Corp.* 50. *Adm.* 1 *Vent.* 47. 2 *Sand.* 305.

To make a Diſtreſs; for this does not veſt, or deveſt any Intereſt. 1 *Sal.* 191.

And therefore, any one may juſtify ſuch an Act, without ſhewing an Authority by Deed.

So he may juſtify as their Servant to remove Cattle out of their Land, without Deed. *R. Lut.* 1497.

So they may do an Act upon Record, without their Common Seal; for they are eſtopped by the Record. 1 *Sal.* 192.

So a Corporation Aggregate may do ſmall Acts. 1 *Sal.* 191.

## (F. 14.) What it cannot do.

But a Corporation cannot do a perſonal Act, which requires Knowledge: as, Homage, or Fealty. *Co. L.* 66. *b.*

Nor be bound in a Statute, or Recognizance. *Per Dyer, Mo.* 68. *Dal.* 69.

Nor wage Law.

So it cannot commit Treaſon, or Felony.

Nor ſhall it be excommunicated; for it has no Conſcience.

## (F. 15.) Purchaſe by a Corporation.

(F. 15.) What good.

A Corporation has an incident Power to purchaſe Lands, or Goods. *Co. L.* 2. *a.* 10 *Co.* 30. *b.* *R.* 1 *Rol.* 513. *l.* 35.

And may take Goods in Succeſſion, without a Licence in *Mortmain.*

So Lands and Tenements, with a Licence.

(F. 16.) When it goes in Succeſſion.

If a Feoffment, Grant, *&c.* be made to a Corporation Aggregate, which conſiſts of Perſons, all capable, it will give a Fee to them without the Word, *Succeſſors.* *Co. L.* 9. *b.* 94. *b.* *D.* 27 *H.* 8. 15. *a.*

So, if the Head only is capable; as, to a Prior and Convent, *&c.* where it is given in *Frankalmoign.* *Co. L.* 9. *b.* 94. *b.*

So a Leaſe to a Corporation Aggregate, *&c.* as, to a Mayor and Commonalty, tho' limited for Life, ſhall be good for ever; for the Words, *for Life,* ſhall be rejected. 27 *H.* 8. 15. *a.*

So Goods and Chattels granted to them go in Succeſſion. *Dy.* 48. *a.* 4 *Co.* 65. *a.*

So an Obligation, *&c.* made to them; tho' it ſays Nothing of Succeſſors. 27 *H.* 8. 15. *a.*

So,

So, if a Maſter of an Hoſpital recovers the Arrears of an Annuity, and dies; they go to the Hoſpital, not to the Executor of the Maſter. 1 *Rol.* 515. *l.* 10.

If the Preſident of the College of Phyſicians recovers in Debt, for Male-Practice; the Succeſſor, and not his Executor, ſhall have a *Scire Facias*. *R.* 1 *Rol.* 515. *l.* 20.

So, by ſpecial Cuſtom, a Corporation Sole may take Goods, &c. in Succeſſion: as, the Chamberlain of *London*. *R. Cro. El.* 464. *R.* 4 *Co.* 65. *a*, *Fulwood*.

But a Feoffment, Grant, &c. to a Corporation Sole will not give a Fee in Succeſſion, unleſs it be limited to him and his Succeſſors. *Co. L.* 94. *b.*

Nor to a Corporation Aggregate; where the Head alone is capable: as, to an Abbot and Convent, &c. without the Word, *Frankalmoign*. *Co. L.* 94. *b.*

So, regularly, no Chattel in Poſſeſſion, or Action, granted, or made to a Corporation Sole, goes in Succeſſion, but to his Executor; tho' it be granted, &c. to him and his Succeſſors. *Dy.* 48. *a.* *R.* 4 *Co.* 65. *a.* 1 *Rol.* 515. *l.* 5, 15.

As, an Obligation, Term for Years, &c. 4 *Co.* 65. *a.* *Vide Biens*, (C.)

(F. 17.) What not good.

But a Corporation, Sole, or Aggregate, Eccleſiaſtical, or Lay, cannot purchaſe, or take Lands and Tenements, without Licence to take in *Mortmain*. *Vide Capacity*, (B. 2, 3.) (*Vide Co. L.* 2. *b.* 2 *Inſt.* 75.)

So a Feoffment, Grant, &c. which takes Effect when a Corporation Aggregate wants a Head, as, to a Mayor and Commonalty, &c. in a Vacation when there is no Mayor, ſhall be void. *Co. L.* 264. *a.* 13 *Ed.* 4. 8. *b.*

A Deviſe to a College by the Maſter is void; for it has not an Head when the Deviſe takes Effect. *R.* 4 *Leo.* 223.

But if there be an Head when the Grant takes Effect, it is ſufficient; tho' there was none when the Grant was made: as, a Leaſe to *A.* for Life, Remainder to a Mayor and Commonalty, made in a Vacation, ſhall be a good Remainder, if there be a Mayor when *A.* dies. *Co. L.* 264. *a.*

So a Grant of Liberties, or Franchiſes, in the Time of Vacation, ſhall be good: as, a Grant to a Commonalty, to be incorporated by the Name of Mayor and Bailiffs, and to chuſe a Mayor. 10 *Co.* 27. *b.*

So Payment of Rent may be made to a Chapter in a Vacation. *Mo.* 52.

So a Licence by the King to grant to a Chaplain, &c. is good, tho' no Chaplain is then *in Eſſe*. 10 *Co.* 27.

So, in Pleading, there is no Need to alledge the Life of the Mayor at the Time of the Grant. *Bro. Corp.* 58. 13 *Ed.* 4. 8. *b.*

## (F. 18.) Alienation by a Corporation.

So a Corporation has an incident Power to make an Alienation of their Lands, or Goods. *Vide* 1 *Sid.* 162.

And tho' they alien all their Goods and Poſſeſſions, yet the Corporation continues. *Jon.* 168.

But an Alienation of the Head, without the Body, is a *Diſſeiſin*. *Co. L.* 341. *b.*

A Fine and Non-claim bars a Corporation, which has an abſolute Fee. *R. Pl. Com.* 537, 8.

But a Succeſſor of a Biſhop, Dean, &c. who have not an abſolute Eſtate, ſhall have other 5 Years. *Pl. Com.* 538.



(F. 19.) Corpora-

## (F. 19.) Corporation may ſue, or be ſued.

So a Corporation has an incident Power to ſue, or be ſued.

And therefore, may maintain a Writ of Right, or other Real Action, for their Tenements. *F. N. B.* 5. *C. Pl. Com.* 537.

A Mayor, and Commonalty may have an Action of Covenant upon a Grant for the Benefit of their Members. 1 *Sand.* 344.

And Treſpaſs for the Impriſonment of the Mayor. *Per Brian*, 21 *Ed.* 4. 14. *b.*

And an Action upon the Caſe for a Diſturbance in holding their Leet, or taking the Profits of Liberties granted to the Corporation. 45 *Ed.* 3. 2. *b.* 18 *H.* 6. 11. *b.*

But the Mayor and Commonalty ſhall not have an Action upon a Bond, made to the Mayor himſelf by his own proper Name. *Per Vaviſor*, 21 *Ed.* 4. 15. *Dy.* 48.

Tho' another be afterwards made Mayor. 21 *Ed.* 4. 15.

So the Commonalty cannot ſue an Action alone, if there be a Mayor, or a Bailiff.

Otherwiſe, if there be no Mayor, or Bailiff. *Dub. Th. Dig. l.* 1. *c.* 22. *S.* 13. 16.

The Proceſs againſt a Mayor and Commonalty is Diſtreſs. 45 *Ed.* 3. 3. *a.* 2 *Ver.* 396.

And in *Chancery*, if they have not whereby they may be diſtrained, upon a Petition to the Lords in Parliament it may be ordered, that if they do not appear upon the iſſuing of Proceſs and *Diſtringas* there, the Bill ſhall be taken *pro Confeſſo*. *Ca. Ch.* 205.

If the Sheriff upon a *Diſtringas* does not compel an Appearance, the Court will oblige him to return larger Iſſues. 1 *Sal.* 191.

But Proceſs of Outlawry does not lie againſt a Corporation Aggregate. 45 *Ed.* 3. 2, 3.

And therefore, Treſpaſs does not lie againſt a Corporation, but againſt the particular Perſons only: for a *Capias* and Exigent do not go againſt a Corporation. *Bro. Corp.* 43. *Qu. Th. Dig. l.* 4. *c.* 13. *S.* 3, 7.

Nor a *Subpœna*; for it has no Conſcience. *D.* 2 *Bul.* 233.

At the Return of the Proceſs it is not ſufficient, if the particular Perſons diſtrained appear. *Bro. Corp.* 28.

Or, if all the Members of the Corporation appear in Perſon. *Bro. Corp.* 28.

But the Corporation muſt appear by Attorny, made under their Common Seal, by the Name of the Corporation. *Bro. Corp.* 28. *Vide Ante*, (F. 12.)

For the Pleadings in Actions by, and againſt a Corporation, *Vide Pleader*, (2 B. 1, 2.)

## (F. 20.) The Members of a Corporation.

(F. 20.) How choſen. The Election; When good.

So a Corporation has an incident Power to chuſe new Members; as, a Mayor, or Bailiffs, Aldermen, *&c.* tho' no Power be given by the Charter. *Dub.* 12 *Co.* 121. *Acc. per* 2 *J.* 1 *Rol.* 514. *l.* 5. *D. Ca. Parl.* 45.

And therefore, an Affirmative Authority by Charter does not take away the incident Power to chuſe: as, if a Charter ſays, *That after Death, Removal, &c. they may chuſe another within* 8 *Days*; if the Election be not within 8 Days, they may chuſe afterwards. *R. per* 2 *J.* 1 *Rol.* 514. *l.* 5.

If

If the Charter ſays, *The Mayor ſhall ſummon a Court, &c.* and he refuſes, it may be done without him. *Semb.* 3 *Mod.* 13.

So, tho' the Charter ſays, *The Commonalty ſhall chuſe*, which imports all the Commons; yet an Election by the major Part is good. *R.* 1 *Rol.* 514. *l.* 10.

And by Uſage, a ſelect Number, called the Common Council, ſhall chuſe; for there ſhall be intended an antient Ordinance for it. *R.* 4 *Co.* 77.

If the Charter ſays, *The Commonalty ſhall chuſe*, and by a ſubſequent Charter, *The Mayor and Aldermen*, an Uſage to chuſe according to the new Charter is good: for it is Evidence of the Conſent of the Corporation to take it as a Grant of a new Privilege, and not as a Confirmation of the former. *R. per* 2 *J. Eyre cont.* 1 *Sal.* 168.

So, if the Charter ſays, The Burgeſſes ſhall chuſe a Mayor *de ſeipſis*; by antient Conſtitutions, and Uſage, the Election of one, out of two whom the Common Council ſhall propoſe, ſhall be good. *R.* 1 *Sal.* 190.

(F. 21.) When not.

But, regularly, the Election ought to be conformable to the Charter; and therefore, if the Charter ſays, *The Mayor and Aldermen ſhall chuſe*, an Election by the Aldermen, without the Preſence of the Mayor, or his Deputy, is bad. *R.* 1 *Rol.* 514. *l.* 20.

If a Charter ſays, *That upon ſuch a Day they ſhall chuſe annually*; they cannot chuſe after the Day, * except upon Death, or Removal; tho' a *Mandamus* be granted for an Election. *R.* 2 *Mod. Ca.* 112, 129.

[* *Vide* 11 *Geo. c.* 4. which allows the next Day ]

By the *St.* 9 *An.* 20. No Mayor, Bailiff, or other Officer, who ſhould preſide at an Election, and return Members to Parliament, and who ought to be choſen annually, when he hath been in ſuch annual Office for one whole Year, ſhall be capable of being choſen into the ſame Office for the Year immediately enſuing.—And an Information lies if he be. 2 *Mod. Ca.* 133.

Yet tho' an Election be void, a Corporate Act by an Officer choſen who officiates in Fact, ſhall be good: as, an Obligation ſealed by a Mayor *de Facto*. *R. Lut.* 519. *Vide Poſt*, (F. 29.)

(F. 22.) Mayor, or Bailiffs.

The Mayor, or Chief Officer of a Corporation, has not any more Authority than the Charter gives him. *D.* 3 *Mod.* 12.

And therefore, if the Charter does not require his Preſence in the Election of Officers, it may be without him. *D.* 3 *Mod.* 13.

*Vide London*, (C.)

(F. 23.) Alderman.

An Alderman is the Senior in Years, or Prudence in a City, *&c. Lat.* 231.

And is a Chief Officer there to aſſiſt the Mayor. *Lat.* 231.

*Vide London*, (D.)

(F. 24.) Recorder.

The Recorder is not only concerned in holding the Courts of the Corporation, but is alſo their Common Council. 1 *Vent.* 145.

And therefore, where the Charter requires *quod ſit peritus in Lege*, he may be removed for groſs Ignorance in the Law. *Semb.* 1 *Vent.* 145.

Or, for unreaſonable Abſence, to the Detriment of the Borough. *Semb.* 1 *Vent.* 145.

Or, for Non-Attendance at the Seſſions, upon Notice. *R. Sal.* 435.

So, if he be choſen during Pleaſure, he may be removed *ad Libitum*. *Vide Poſt*, (F. 32.)

But where choſen for Life, or (which is *tantamount*) generally, or *quamdiu bene ſe geſſerit*, he cannot be removed without Cauſe.

*Vide London*, (E.)

(F. 25.) Common Council.

A Power to aſſemble the Corporation to elect and to adviſe, and aſſiſt the Corporation, is lodged in the Common Council.

The Common Council conſiſts of Perſons choſen purſuant to the Charter for that Purpoſe; which ought to be obſerved. *Per Att. Gen. Quo W.* 32.

Or, if the Charter be ſilent, all the Corporation, who aſſemble, makes the Common Council. *Per Att. Gen. Qu. W.* 32.

Or, by antient Uſage, a ſelect Number makes the Common Council: for there ſhall be intended an antient Ordinance, now loſt, which directs it. *R.* 4 *Co.* 77. *b.*

The Power of the Common Council is according to the Charter, or Uſage. *Per Pol. Quo W.* 89.

An Act of Common Council, purſuant to their Power, binds the whole Corporation. *Per Finch, Quo W.* 18. *Per Treby,* 49. *Per Att. Gen.* 33. *Per Pol.* 89.

But the Court does not take Notice of the Power of the Common Council, unleſs it be ſhewn upon Record. *Per Pol. Quo W.* 90.

*Vide London,* (F.)

(F. 26.) Livery-man.

The Office of a Livery-Man is ſuch of which *B. R.* will take Notice. 1 *Sal.* 349.

And he may be bound by a By-Law, *&c.* to all incident Charges. 1 *Sal.* 349. *Vide By-Law,* (B. 4.)

(F. 27.) Town-Clerk.

The Office of Town-Clerk is Miniſterial.

And therefore, if he be made Mayor, *&c.* who is the Judge of the Court, his Office is void; for they are incompatible. *Semb. but not determined.* 1 *Sid.* 305. *Vide Officer,* (K. 5.)

So, if he be made Alderman. *Dy.* 332. *b. in Marg. Poph.* 176.

But if he be choſen Mayor, Alderman, *&c.* to avoid his Place of Town-Clerk, he may be reſtored to it by *Mandamus. Noy* 78.

A Town-Clerk may be choſen during Pleaſure, and then he will be removable *ad Libitum. Vide Poſt,* (F. 32.)

Or, for Life, when he is choſen generally, or *quamdiu ſe bene geſſerit.* 1 *Vent.* 82.

And then he cannot be removed except for good Cauſe; as, for Abſence, or Non-Uſer. 1 *Sid.* 14. *Vide Condition,* (S. 1, 2.)

So a Town-Clerk may be choſen in Reverſion. *Dy.* 332. *in Marg. Poph.* 176. *Noy* 78.

(F. 28.) Common Burgeſs. What will give a Right to Freedom.

A Right to Freedom in a Corporation accrues by Charter, or Preſcription.

By the Cuſtom of *London,* a Man ſhall be free by Birth, by Service, or by the Election of the Court of Aldermen upon a Fine. 8 *Co.* 126. *b.*

But a Man ſhall not have Freedom in a Corporation by the King's Grant. 8 *Co.* 126. *b.*

(F. 29.) What is requiſite after Election.

By the *St.* 7 *Jac.* 6. a Mayor, *&c.* ſhall take the Oath of Allegiance before thoſe, who adminiſter to him the Oath of Office, at his Entry into his Office.

Aldermen, and all Officers of a Corporation, ſhall take it before the Mayor, or Chief Magiſtrate, in the publick Hall.

So, every Freeman.

And

And therefore, every Perſon choſen into an Office, or Freedom of a Corporation, ought to take the Oath of Office, and the Oaths of Allegiance and Supremacy.

So, by the *St.* 13 *Car.* 2. 1. A Mayor, Alderman, Recorder, Bailiff, Town-Clerk, Common-Council-Man, or any choſen to any Place concerning the Government of a Corporation, if he has not received the Sacrament within a Year before, his Election ſhall be void.

So, if he takes not the Oaths of Allegiance and Supremacy, when he takes the uſual Oath of Office.

So, if he does not ſubſcribe the Declaration againſt taking up Arms and and the Covenant.—But this is now abrogated by the *St.* 1 *W. & M.* 8. * * [And 5 *Geo.* 6.]

So, by the *St.* 25 *Car.* 2. 2. Every Officer of Truſt, within 3 Months, *&c.* ſhall take the Oaths, and receive the Sacrament, *&c.*

So, by the *St.* 13 & 14. (or 13) *W.* 3. 6. 1 *An. St.* 1 *ch.* 22. & 1 *Geo. St.* 2. *ch.* 13. * * [*Vide* 2 *Geo.* 2. 31. & 9 *Geo.* 2. 26]

And if any refuſes the Oath, *&c.* required by Statute he may be fined in the ſame Manner, as by Charter he may be, for Refuſal of the Office: for Refuſal of the Oath, is a Refuſal of the Office. *R.* 3 *Lev.* 116.

And an Information lies againſt him. *R.* 1 *Sal.* 168.

And it is no Excuſe, that he has not received the Sacrament within a Year. *R.* 1 *Sal.* 168.

But an Office ſhall not be void for not taking the Oaths, *&c.* if they are not tendered; and therefore the Tender is traverſable: for the Clauſe 13 *Car.* 2. relates to the former Clauſe, which ſays, *he ſhall take, &c. when required. R.* 2 *Lev.* 242. *R. cont.* 5 *Mod.* 318. *Sal.* 429.

So the Office ſhall be void only as to himſelf; not as to a Stranger: and therefore, a judicial Act by him is good. *R. cont.* 2 *Lev.* 184. *R. acc.* 2 *Lev.* 242. If any corporate Act. *R. Lut.* 519.

So judicial Acts by a Biſhop *de Facto* are not void. *R.* 2 *Cro.* 554. 2 *Rol.* 131.

So a Quaker, who takes the Affirmation, inſtead of the Oath, in the uſual Form required of a Freeman, ought to be admitted to his Freedom. *R.* 5 *Mod.* 403.

So, by the *St.* 5 *Geo.* 6. None ſhall be removed, or incur a Diſability, *&c.* by omitting the Sacrament a Year before his Election, unleſs a Proſecution be commenced within 6 Months after Election, and carried on without wilful Delay.

So a Freeman, who has not an Office, or Share in the Magiſtracy of the Corporation, need not take the Sacrament. *R. F,g.* 47.

(F. 30.) Removal from an Office. By Reſignation.

Every Member, or Officer of a Corporation may reſign his Place, or Office. *R.* 2 *Rol.* 456. *l.* 10. 1 *Sid.* 14. *Semb. cont.* 1 *Rol.* 137. *R. Poph.* 134. *R.* 2 *Rol.* 11.

And a Corporation has Power to take ſuch Reſignation. 1 *Sid.* 14.

And a Reſignation by *Parol*, if it be accepted and an Entry made of it, is ſufficient. *Semb. per B. R. H.* 11 *W.* 3. upon a Return of a *Mandamus* to the Mayor of *Rippon. Sal.* 433.

And if the Reſignation be accepted, he cannot afterwards claim to be reſtored. *R.* 1 *Sid.* 14. *Sal.* 433.

(F. 31.) By the Corporation. For what Cauſe allowed, and for what not.

So a Corporation by Charter, or Preſcription, for good Cauſe, may remove an Officer from his Office. *

So, if by Preſcription he was amovable, tho' the Corporation accepts a Charter, which does not give ſuch a Power. *R. Ray.* 439.

As, [* *Vide* 2 *Str.* 819.]

As, if he does a Thing contrary to the Duty of his Place, the Weal of the Borough, or Oath of his Office. 11 *Co.* 99. *a.*

So, if an Alderman be convicted as a common Drunkard: for he is not fit for Government. *R.* 2 *Rol.* 455. *l.* 50. *Dub.* 1 *Rol.* 409.

So, if an Alderman removes out of the Borough, and upon expreſs Summons refuſes to attend the Service there. *R.* 4 *Mod.* 36. *Semb. Sho.* 259.

But it is no Cauſe, that an Alderman is above 70 Years of Age. *R.* 2 *Rol.* 456. *l.* 5. 2 *Rol.* 11.

That he miſbehaved himſelf when he was Mayor. *Semb. Sti.* 151.

Or did not account for Money, received by him to the Uſe of the Corporation. *Sti.* 151.

Or wrote a Letter to a Secretary of State, which charged the Mayor with Subornation. *Carth.* 174.

*Vide Poſt*, (F. 33, 34.)

(F. 32.) When, *ad Libitum.*

So a Miniſterial Officer choſen *durante beneplacito* may be removed *ad Libitum*: as, a Town-Clerk. *R.* 1 *Vent.* 77, 82. *Ray.* 188. 1 *Lev.* 291.

So, a Recorder. *R.* 1 *Vent.* 342. 2 *Jon.* 52.

So, if the Charter ſays, that the Recorder ſhall continue *durante beneplacito*, tho' there are no negative Words. *R.* 2 *Jon.* 52.

And tho' the Election be general, if it be not under the Common Seal. *R.* 2 *Jon.* 52. 1 *Vent.* 355.

So a Cuſtom to remove a Common-Council-Man *ad Libitum* is good. *Dy.* 332. *b. R.* 2 *Cro.* 540. 2 *Rol.* 112. *Sal.* 430.

So, where a Mayor, *&c.* has Power to chuſe his Town-Clerk, he may alſo remove him *ad Libitum*. *R.* 1 *Sid.* 15.

And where an Officer is removeable *ad Libitum*, he may be removed without Summons or Hearing of him, *&c.* 1 *Sid.* 15. 1 *Lev.* 291.

But, generally, an Officer ſhall not be removed without Cauſe.

Tho' the Charter ſays, generally, that he may be removed. *Dy.* 332. *b. in Marg.*

So a Cuſtom to remove an Alderman, or Judicial Officer *ad Libitum* is void; for he cannot be removed without Cauſe. *Dy.* 332. *b. in Marg.* 2 *Cro.* 540. 2 *Rol.* 112.

So, tho' the Charter ſays, that they may chuſe for Life *ſi viderint expedire*, they cannot amove *ad Libitum*, without a Power for it. *R.* 1 *Lev.* 148.

(F. 33.) What is a Cauſe for Diſfranchiſement, and what not.

So, if a Burgeſs acts contrary to the Duty of his Freedom, the Publick Weal of his Borough, or the Oath taken upon his Enfranchiſement, he may be diſfranchiſed; for he breaks the Condition *tacitè* annexed to his Freedom. *R.* 11 *Co.* 98. *a*, *Bagg. Carth.* 176.

As, if he makes a Riot in Diſturbance of the Election of a Mayor. *R. Ray.* 438.

If he continues in Court, and makes Orders, after the Court is adjourned, and the Mayor, *&c.* departed. *Sti.* 479, 480.

If he deſtroys, or eraſes the Charters and Evidences of the Corporation. 11 *Co.* 99. *a.*

If he be convicted of a Crime which renders him infamous: as, Forgery, Conſpiracy, Perjury, *&c.* 11 *Co.* 99. *a.*

But Words to the Chief Magiſtrate *contra bonos Mores* are no Cauſe for Diſfranchiſement: as, if he ſays, *You are a Knave, kiſs, &c. R.* 11 *Co.* 96, 98, 99. *a.*

Tho' it be upon an Admonition by the Mayor, for a malicious Act to another Burgeſs. *R.* 2 *Cro.* 506.

Or ſays, that the Mayor in the Execution of his Office did that which he cannot anſwer. *R.* 11 *Co.* 97.

Or threatens the Mayor. 11 *Co.* 96. *a.* *Sti.* 151. *R.* 2 *Cro.* 506.

So a Cuſtom to disfranchiſe for contemptuous Words, is not good. *Sal.* 426. 2 *Lev.* 200. *Semb. Lat.* 232. *Pal.* 455.

Nor refuſing to pay his Proportion for the Renewal of the Charter. *R.* 1 *Sid.* 282.

Or, if a Livery-man refuſes the uſual Payments for Support of the Company. *Semb. Cont. Ray.* 446.

If he ſues out of the Court of the City, or Borough. *R. Dy.* 333. *a.*

Or refuſes to ſubmit a Thing in Suit to Arbitrament. *Cro. El.* 33.

So an Attempt, Menace, or Conſpiracy to do an Act contrary to his Duty, or which tends to the Deſtruction of the Corporation, is no Cauſe, if he does it not. *R.* 11 *Co.* 98. *b.*

As, if he threatens the Ruin of their Charter, or Privileges. 11 *Co.* 97. *b.*

If he diſſuades the Payment of Cuſtoms due. *R.* 11 *Co.* 97. *b.*

So an Indictment for Felony, or other Offence, is no Cauſe of Removal, before he be convicted; for he may be falſely indicted. *Sti.* 479.

Nor an Indictment after Removal, tho' the Offence was done before. *Sti.* 479.

*Vide Poſt*, (F. 34.)

(F. 34.) How a Man ſhall be amoved, or disfranchiſed.

A Corporation, having Power by Preſcription, or the expreſs Words of the Charter, to amove, or disfranchiſe, *&c.* may ſo do for good Cauſe: and ſuch Amoval will be *per Legem Terræ.* *R.* 11 *Co.* 99. *a.*

If they have no expreſs Power, yet they may, after Conviction of a Crime which is a good Cauſe for Amoval, or Disfranchiſement. 11 *Co.* 99. *a.* *Semb.* 1 *Sid.* 14.

So they may, if the Corporation, which had Power by Preſcription, takes a new Charter which does not give ſuch Authority; for the antient Power continues. *R. Ray.* 439. 1 *Vent.* 355.

And they may amove, if the Party does not appear upon Summons.

Tho' he was ſummoned but the very Day of the Amoval, if he reſides in the ſame Town. *R.* 1 *Vent.* 19.

But a Corporation, not having expreſs Power by Charter, or Preſcription, * cannot amove from an Office, or Freedom, before the Perſon be convicted of an Offence, which is a good Cauſe for Removal. 11 *Co.* 99. *a.*

* [*Vide* 2 *Str.* 819.]

So they cannot amove upon a Command by the King and Council. *Cont. per* 3 *J. Twiſd. tacente.* 1 *Vent.* 20.

So, if they have an expreſs Power, *&c.* they cannot amove, without ſummoning the Party to anſwer for himſelf, and hearing him; for he may have a good Excuſe. *R.* 11 *Co.* 99. *a.* *R.* 1 *Sid.* 14. *Vide Mandamus*, (D. 3, 4.)

Nor, without reaſonable Warning. 11 *Co.* 99.

Nor, by an Order; for it ought to be a Corporate Act under the Common Seal. 5 *Mod.* 259.

So, if it has a Power by Preſcription, *&c.* the Corporation ought to ſhew that it has uſed to remove; for it is not ſufficient to ſay, that they are always removable. *Sti.* 479, 480.

If a Freeman, or Officer, in a Corporation be amoved, *&c.* without Cauſe, a *Mandamus* lies. *Vide Mandamus*, (A.)

## (G) Franchiſes, How deſtroyed.

### (G. 1.) By Re-Union to the Crown.

*Vide Liberties,* (C. 1, 2.)

IF Franchiſes and Liberties are granted by the King, which were before *in Eſſe*, as Flowers of his Crown, and afterwards by Eſcheat, Surrender, or otherwiſe, come back to the Crown, they are re-united to the Crown, and the King has them in *Jure Coronæ*, as before. *R.* 9 *Co.* 25. *b.*

As, if the King grants *Bona Felonum*, *&c.* to an Abbot, and his Poſſeſſions are given to the King by the *St.* 27 *H.* 8. or 32 *H.* 8. the King is ſeiſed again of the ſame Things, as before, *in Jure Coronæ.* 9 *Co.* 25. *b.*

So, a Common in Groſs. *Jon.* 285.

So, a Liberty to be quit of *Swanimote*; or other Liberties in the Nature of Purveyance. *Jon.* 270.

So, if Liberties, Franchiſes, *&c.* which were appendant to a Manor, as Wrecks, Waifs, Eſtrays, *&c.* come with the Manor to the King; the Appendancy is extinct, and the King is ſeiſed of them, as before, *in Jure Coronæ.* 9 *Co.* 25. *b.* *Cro. El.* 591. 1 *And.* 87.

So, if Liberty to hunt within a Foreſt be granted to an Abbot, who has the Manor of *W.* and the Manor comes to the King; the Liberty ſhall be extinct. *Jon.* 286.

But if Franchiſes, Liberties, *&c.* created *de novo* by the King, come back to the Crown; they are not merged, or extinguiſhed in the Crown. 9 *Co.* 25. *b.* 1 *And.* 87.

As, a Fair, or Market, with Toll, *&c.* for the King would loſe them for ever, if they ſhould be extinguiſhed. *R. Cro. El.* 592.

A Park, Warren, *&c.* *Cro. El.* 592.

If a Lieutenant of the King's Chace has Title by Preſcription to hunt within the Manor of *S.* as in the Purlieu of the Chace; if the Manor comes to the King, and afterwards is regranted, the Liberty to hunt there is not extinct. *R. Dy.* 327. *a.*

If a Hundred is ſevered from the County before the *St.* 14 *Ed.* 3. 9. and afterwards comes back to the Crown; it ſhall not be extinct. *Dub.* 3 *Mod.* 200.

If a Liberty to have a *Swanimote* Court held in his Manor be granted; it ſhall not be extinguiſhed, if the Manor comes to the King, and is afterwards regranted. *Jon.* 286.

### (G. 2.) By Surrender.

A Surrender of a Charter by Writing ſhall be void, if it be not inrolled. *R.* 1 *Sal.* 191.

Every Surrender of their Liberties, *&c.* does not diſſolve the Corporation. *Semb.* 2 *Mod. Ca.* 361.

If a Surrender of a Charter be void; a new Grant in Conſideration of ſuch Surrender, ſhall be alſo void.

And if the old Members act by themſelves, after the new Charter, and by Colour thereof; their Acts ſhall be good, in Reſpect of their antient Right. *R.* 1 *Sal.* 191.

But, after a new Charter upon a void Surrender, if the old Members join with thoſe, who have no Authority but by the new Charter; their Acts will be void, tho' the old Members are the Majority. *R.* 1 *Sal.* 191.

## (G. 3.) By Forfeiture.

So Franchiſes may be forfeited by Breach of the Truſt, upon which they were granted, and Perverſion of the End of their Grant, or Inſtitution.

As, if a Leet be diſuſed, and has no Officers, or Inſtruments for Puniſhment. *Jon.* 283.

So a Corporation itſelf may be forfeited, if the Truſt upon which it was created be broken, and the Inſtitution of it perverted. *Per Holt, Sho.* 280. 4 *Mod.* 58. *Skin.* 310.

So Franchiſes may be forfeited by *Miſuſer*, or *Abuſer*, or other Miſdemeanor in him to whom they are granted.

## (G. 4.) By the Diſſolution of a Corporation.

(G. 4.) What ſhall be a Diſſolution.

So Franchiſes may reſult to the King, or Donor, if the Body to whom granted be diſſolved, or extinguiſhed: as, if Land be given to an Abbot and Convent, who all die, by which the Corporation is diſſolved; the Land does not eſcheat, but the Donor ſhall have it again. *Co. L.* 13. *b.* 2 *And.* 107.

So, if Land, or other Poſſeſſions are granted to a Dean and Chapter, Mayor and Commonalty, *&c.* who are diſſolved. *Co. L.* 13. *b.* *R. Godb.* 211. 1 *Rol.* 816. *l.* 22.

So, if a Corporation be conſtituted of Brethren and Siſters, and all the Brethren die, or all the Siſters; the Corporation is thereby diſſolved. 1 *Rol.* 514. *l.* 40.

So, if a Corporation refuſes to continue the Election of Officers, till all die who could make an Election: for thereby the Corporation is diſſolved.

Or, if the King names the Head of the Corporation, and they refuſe his Nomination till the Body be dead. *Jon.* 168.

So, if the Abbot, and all the Monks of a Convent are deraigned, and relinquiſh their Habit and Order; the Corporation is diſſolved. *Dav.* 1. *b.*

If a Chapel, and all the Poſſeſſions thereto annexed be aliened; the Chaplain ceaſes; for he cannot be a Chaplain of Nothing. 3 *Co.* 75. *a.*

But if a Corporation gives an Obligation under the Common Seal, and ſome of the principal Members ſign it, but the Words are, *Noverint Nos Magiſtrum & Guardian', &c. teneri, &c.* by their Corporate Name; if the Corporation be afterwards diſſolved, the particular Members ſhall not be charged. *R.* 1 *Lev.* 237.

(G. 5.) What ſhall not be a Diſſolution.

But by a Change of the Name, or a new Incorporation of the ſame Perſons, the old Corporation is not extinct, nor the Privileges granted to it.

So, if a Dean and Chapter grant their Church, and all their Poſſeſſions; their Corporate Capacity continues. 3 *Co.* 75. *a.* *Jon.* 168.

If a Manor, which is the whole Body of a Prebend, be evicted, the Prebend continues. 3 *Co.* 75.

If by Surrender, or Act of Parliament, all the Poſſeſſions of an Hoſpital are reſumed, the Maſter and Brethren of the Hoſpital continue. *Dav.* 1. *b.*

So, if the Franchiſes of a Corporation are ſeiſed, or ſurrendred, the Corporation itſelf continues. *Per Holt, Skin.* 311.

If

(G. 6.) When Franchiſes are not gone by the Diſſolution of the Corporation.

If a Corporation have granted over their Poſſeſſions to another, before their Diſſolution, they do not return to the Donor. *R.* 1 *Rol.* 816. *l.* 10, 20.

*Vide Prærogative*, (D. 30, 53.)—*Retorn*, (B. 1, &c.)

## FRANK-FEE.

*Vide Ancient Demeſne*, (B.)

## FRANK-MARRIAGE.

*Vide Eſtates*, (B. 6.)

## FRAUD.

*Vide Bankrupt*, (C. 2, &c.)—*Chancery*, (2 Q. 5.)—*Deceipt*, *and the References there marked.*

## FREEDOM.

*Vide Franchiſes*, (F. 28, 33, 34.)

## FREEHOLD.

*Vide Abeyance.*—*Chancery*, (4 G. 4.)—*Copyhold*, (K. 14.—R. 15.)—*Eſgliſe*, (G. 1.)—*Parceners*, (A. 4.)—*Pleader*, (3 K. 22.)—*Probibition*, (F. 2, &c.)—*Remitter*, (C. 4.)

## FREIGHT.

*Vide Merchant*, (E. 3.)

## FRUITS.

*Vide Diſmes*, (H. 10.)

# GAME.

*Vide Juſtices of Peace*, (B. 43, &c.)

# GAMING.

*Vide Bankrupt*, (D. 38.)—*Juſtices of Peace*, (B. 42.)—*Pleader*, (2 G. 8.—2 W. 26.)

# GAOL, AND GAOLER.

*Vide Impriſonment*, (A.—B, &c.—F.)

# GAOL-DELIVERY.

*Vide Juſtices*, (H.)

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# GARDIAN.

## (A) Guardian in Chivalry.

GUARDIAN is by the Common Law, or by Statute. 3 *Co.* 37. *b.*

There are 4 Guardians by the Common Law: In *Chivalry*, By Socage, By Nature, By reaſon of Nurture. 3 *Co.* 37. *b.* *Co. L.* 88. *b.*

If a Man had died ſeiſed of Lands holden by Knight's Service, the Lord had the Wardſhip of the Land and the Perſon of his Heir Male, till his Age of 21 Years. *Lit. S.* 103.

And of his Heir, if it was a Female, till her Age of 14 Years. *Lit. S.* 103.

And by the *St. W.* 1. 22. If ſuch Heir Female was within 14 Years at the Death of her Anceſtor and unmarried, till her Age of 16 Years, *viz.* for 2 Years longer; but if ſhe was above 14, or married before 14, it remains as at the Common Law. *Lit. S.* 103.

If the Lord die, his Executor ſhall have the Ward, till his Age of 21 Years. *Lit. S.* 125.

By the *St.* 32 *H.* 8. 1. which allows of deviſing 2 Parts of Lands holden in *Chivalry*, the Wardſhip of the Heir for the other 3d Part is ſaved to the Lord.

And if two are Joint-tenants of Land for Life and to the Heirs of one, who dies; his Heir ſhall be in Ward during the Life of the other.

So, by the Equity of the ſame Statute, if Land be ſettled to the Mother for Life, Remainder to the Father in Fee, and he dies; the Lord ſhall have the Wardſhip of the Heir within Age, and not his Mother. 2 *Cro.* 40.

Or, to the Mother for Life, Remainder to the Father for Life, and afterwards to the Heirs of his Body, and afterwards to him in Fee. *R.* 2 *Cro.* 40.

But if Land deſcend to the Son as Heir to his Mother, in the Life of his Father, the Father ſhall have the Wardſhip of the Perſon of his Heir apparent, tho' the Lord has the Wardſhip of his Land. *Co. L.* 84.

Tho' a Daughter be his Heir apparent, the Father ſhall have the Wardſhip of her Body, and her Marriage. *R.* 6 *Co.* 22. *Mo.* 738.

So, if the Father marry his Daughter, who is his Heir apparent, and afterwards by a ſecond Venter has a Son, he ſhall not anſwer to the Lord for the Marriage, tho' he could not have her Marriage after the Birth of his Son. *Mo.* 739.

Yet the Mother after the Death of her Huſband ſhall not have the Wardſhip of his heir apparent, tho' ſhe has Land deſcendible to him. *Mo.* 738. *Lit. S.* 114.

So the Father ſhall not have the Wardſhip of any other than his Son or Daughter, tho' it be his preſumptive Heir. *Co. L.* 84. *a.*

Nor ſhall the Father, if he be an Alien, attainted, *&c.* have the Wardſhip of his Son; for then he is not his Heir apparent. *Co. L.* 84. *b.*

But now, by the *St.* 12 *Car.* 2. 24. All Tenures by Knight's Service of the King, or of any other Perſon, and by Knight's Service *in Capite*, and by Socage *in Capite* of the King, and the Fruits and Conſequents thereof, are taken away and diſcharged. And all Tenures of Honours, Manors, *&c.* held either of the King or any other Perſon, are turned into free and common Socage.

## (B) Guardian in Socage.

### (B. 1.) Who ſhall be.

IF a Man die ſeiſed of Lands holden in Socage, his Heir within the Age of 14 Years, the next Friend of the Heir, to whom the Inheritance cannot deſcend, ſhall have the Wardſhip of the Land, and of the Heir, till his Age of 14 Years. *Lit. S.* 123. 2 *Rol.* 40. *l.* 10.

And by the *St.* 12 *Car.* 2. 24. All Tenures are turned into free and common Socage.

And therefore, if the Anceſtor die ſeiſed of Lands holden in Socage, the next Friend of the Heir, to whom the Inheritance cannot deſcend, ſhall be his Guardian.

As, if Land deſcend on the Part of the Father, the Mother, or next Friend on the Part of the Mother, ſhall be Guardian. *Lit. S.* 123.

Or, if Land deſcend on the Part of the Mother, the Father, or next Friend on the Part of the Father. *Lit. S.* 123.

If a Woman has 2 Sons by divers Huſbands, and dies, her youngeſt Son within 14, his Brother of the half Blood ſhall be Guardian before his Uncle. *Per* 2 *J. Warb. cont. Mo.* 635. *Ow.* 128. *Cro. El.* 825. *Dub.* 2 *Jon.* 17.

If there are 3 ~~Sons~~ brethren, and the youngeſt dies ſeiſed of Lands in Socage, his Heir within the Age of 14 Years, the eldeſt male ſhall be his Guardian; for he ſhall be preferred as the moſt worthy. *Co. L.* 88. *a.*

So, if a Man be Donee in *Frankmarriage* and die, his Heir within 14, the next Friend of the Part of the Mother ſhall be Guardian; for the Mother was the Cauſe of the Gift. *Co. L.* 88. *a.*

Yet

Yet generally, where there are ſeveral in equal Degree, he who firſt ſeiſes the Heir ſhall be Guardian: As, if Land be given to *A.* and the Heirs of his Body, the next Couſin on the Part of the Father, or on the Part of the Mother, who firſt takes the Heir, ſhall be his Guardian, and the Friend on the Part of the Father ſhall not be preferred. *Co. L.* 88. *a.*

So, if a Man dies ſeiſed of Land on the Part of his Father, and other Land on the Part of his Mother, the next of Blood on the Part of the Father ſhall enter into the Land on the Part of the Mother, and the next of Kin on the Part of the Mother into the Land on the Part of the Father. *Co. L.* 88. *a.*

If *A.* be Guardian in Socage to *B.* and another dies, his Heir within 14 Years, to whom *B.* is next Friend, *A.* ſhall be his Guardian by reaſon of his Ward. *Co. L.* 88. *b.*

There ſhall be a Guardian in Socage, tho' the Heir be Iſſue Male, or Female. *Co. L.* 88. *a.*

Tho' he be a Brother, or other Couſin of his Anceſtor. *Co. L.* 88. *a.*

## (B. 2.) Who not.

But the Guardian in Socage ought to be the next in Blood; and therefore the next in Affinity ſhall be excluded. *Co. L.* 88. *a.*

So every one ſhall be excluded, to whom the Inheritance by Poſſibility may deſcend: And therefore, if a Man has 2 Sons by ſeveral Venters and the youngeſt dies ſeiſed of Land in Borough Engliſh, his Heir within 14, the eldeſt Son of the half Blood ſhall not be Guardian; for the Land by Poſſibility may deſcend to the Uncle, and afterwards to him. *Co. L.* 88. *b.*

So, if an Infant claims by Purchaſe, not by Deſcent as Heir, he ſhall not be in Ward. 2 *Mod.* 176.

So an Infant cannot be Guardian; for Account does not lie againſt him, *Co. L.* 88. *b.*

Nor an Ideot, Lunatick, or *Non compos.* *Co. L.* 88. *b.*

Nor a Leper, removed by a Writ *de Leproſo amovendo.* *Co. L.* 88. *b.*

Nor *Surdus*, *Cæcus*, and *Mutus.* *Co. L.* 88. *b.*

If the Guardian die, his Executor or Adminiſtrator ſhall not have the Ward. *Vau.* 181.

If a Wife being a Guardian die, her Huſband ſhall not have it, tho' he ſurvive. *Co. L.* 89. *a.*

So a Guardian in Socage cannot deviſe his Wardſhip to another, but the next Friend to the Heir, after the Death of the firſt Guardian, ſhall have it. *Vau.* 178, 181.

Nor ſhall it be forfeited by his Outlawry, or Attainder. *Co. L.* 88. *b.*

## (B. 3.) What Things he ſhall have.

Guardian in Socage ſhall have the Cuſtody of the Land, and Body of the Heir, till his Age of 14 Years.

If the Heir has a Rent-Seck, Common of Paſture, or other Inheritance which does not lie in Tenure, the Guardian ſhall have the Cuſtody of them as well as of his Land. *Co. L.* 87. *b.*

## (B. 4.) What he may do.

Guardian in Socage may take all the Profits of the Eſtate of the Heir for his Benefit.

So he may make a Leaſe of the Infant's Eſtate till his Age of 14 Years. 2 *Rol.* 41. *l.* 17. 2 *Cro.* 98.

And

And upon ſuch Leaſe the Leſſee may maintain an Ejectment. 2 *Rol.* 41. *l.* 17.

And Acceptance of a Leaſe by a Guardian by the Leſſee of the Father, is tantamount to a Surrender of the firſt Leaſe. *R.* 1 *Leo.* 158, 322. *Ow.* 45.

So a Guardian may make an Admittance, or voluntary Grant of a Copyhold; for he is *Dominus pro tempore*. *Vide Copyhold*, (C. 3.)

So, a Grant of a Reverſion of a Copyhold; tho' it does not fall during the Nonage. 2 *Rol.* 41. *l.* 12. 2 *Cro.* 99. *Vide Copyhold*, (C. 3.)

So a Guardian in Socage may avow in his own Name and Right, for Rent upon a Leaſe by him. 2 *Cro.* 98.

So he may have Treſpaſs, or Raviſhment of Ward. 2 *Cro.* 99. *F. N. B.* 140. *C.*

So an Ejectment of Ward, for the Land of the Infant. *F. N. B.* 140. *C.*

## (C) Guardian by Nature.

IF a Son has Lands as Heir to his Mother, which are holden by Knight's Service, his Father ſhall be Guardian of his Body, and ſhall have his Marriage, and not the Lord; for none ſhall be in Ward to another, living his Father. *Lit. S.* 114. *Co. L.* 88. *b.* *Mo.* 738.

And therefore, if the Father be Lord of the Land holden by Knight's Service, he ſhall have the Cuſtody of his Heir apparent as Father, and not as Lord. *Co. L.* 84. *a.* 3 *Co.* 39.

Be the Heir apparent Son, or Daughter. *Co. L.* 84. *a.* 3 *Co.* 38.

And the Father ſhall have the Guardianſhip of his Heir apparent till his Age of 21 Years. *Semb. Carth.* 385. 5 *Mod.* 223.

But this extends only to the Cuſtody of the Body and the Marriage of his Heir; for the Lord in *Chivalry* ſhall have the Cuſtody of the Land. *Co. L.* 84. *a.*

So it does not extend to a Collateral Heir, but only to his Son or Daughter, his Heir apparent. *Co. L.* 84. *a.*

So it extends only to the Father; for the Grandfather ſhall not have the Wardſhip of his Heir apparent.† 6 *Co.* 22. *b.*

Nor, the Mother by the Common Law.‡ *Semb.* 3 *Co.* 38. *Co. L.* 84. *b.*

So, if the Father be an Alien, he ſhall not have the Wardſhip of his Son; for he cannot be his Heir. *Co. L.* 84. *b.*

Or, if he be attainted. *Co. L.* 84. *b.* 3 *Co.* 38. *a.*

If the Father be outlawed, it ſhall not be forfeited. 3 *Co.* 39. *a.*

Nor ſhall it go to the Executor or Adminiſtrator of the Father. 3 *Co.* 39. *a.*

Nor can it be granted or diſpoſed by the Father to another. *R. Van.* 180.

So, if the Father be Guardian in Socage, he ſhall have the Cuſtody of his Son as Guardian, not as Father. *Co. L.* 88. *b.*

So, if the Father commits Waſt, he forfeits his Guardianſhip. *Hard.* 96.

† That is, the grandfather shall not have such wardship as Guardian in chivalry, as the father shall. See 3. Co. 38.

‡ This must be understood in the same manner, as the doctrine concerning the grandfather.

## (D) Guardian by Reaſon of Nurture.

SO the Father and Mother of an Infant, who is not an Heir apparent, ſhall be Guardian to him, till his Age of 14 Years, by reaſon of Nurture. 8 *Ed.* 4. 7. *b.* 3 *Co.* 38.

And by the Courſe of the Law, the Wardſhip is caſt upon him, when the Infant has no Land. 8 *Ed.* 4. 7. *b.*

So,

So, after the Death of the Father and Mother, the Grandfather or Great Grandmother ſhall have the Care of the Grandſons and Granddaughters. *Fl.* 1. *c.* 6.

So *Nepotes & Neptes ſunt in Poteſtate Avi paterni, & eo mortuo recidunt in Poteſtate Patris.* *Fl.* 1. *c.* 7. But it was agreed, that the Father or Mother ſhall have the Nurture of their Infant, and not the Grandfather. *Mo.* 738.

And the Father or Mother by reaſon of the Nurture ſhall have Treſpaſs againſt a Stranger, who takes the Infant. *Mo.* 738.

But a Stranger to the Infant cannot be his Guardian by reaſon of Nurture. 8 *Ed.* 4. 7. *b.*

So *Natus ex filiâ non erit in poteſtate Avi, ſed Patris.* *Fl.* 1. *c.* 6. *Co. L.* 84. *b.*

Guardian by reaſon of Nurture is for the Education or Governance of an Infant, who has no other Guardian, till his Age of Diſcretion. 8 *Ed.* 4. 7. *b.*

And therefore, he cannot detain the Infant againſt his Guardian in *Chivalry*, or Socage. 11 *H.* 4. 54. *b.*

If he diſcharges the Infant out of his Houſe, and he binds himſelf Apprentice, he cannot afterwards retake him. 8 *Ed.* 4. 7. *b.*

If he grants the Infant to another, that binds himſelf, and he cannot afterwards retake him. *Dub.* 8 *Ed.* 4. 7. *b.*

If he makes a Leaſe of the Lands of the Infant, nothing paſſes but only at Will; for he has no Intereſt in the Land. 1 *Leo.* 158. *R. Cro. El.* 678, 734.

But if a Guardian by reaſon of Nurture delivers the Infant to another for his Inſtruction, he may afterwards retake him. *R.* 8 *Ed.* 4. 7. *b.*

If he grants the Infant to another, he need not ſtay with the Grantee. 8 *Ed.* 4. 7. *b.*

If there be an Action againſt himby the Guardian in *Chivalry*, or Socage, it will be a good Plea to ſay, that he claims only by reaſon of Nurture, and the other claims as Ward, and he is ready to render him as the Court thinks fit. 8 *Ed.* 4. 7. *b.*

So the Father or Mother ſhall not have the Wardſhip of the Son or Daughter, by reaſon of Nurture, beyond the Age of 14. 3 *Co.* 38. *b.*

## (E) Guardian by Statute.

### (E. 1.) By the *St.* 4 & 5 *Ph. & M.*

BY the Common Law there was Guardian by *Chivalry*, Socage, Nature, and by reaſon of Nurture only. *Co. L.* 88. *b.* 3 *Co.* 37. *b.*

But now, by the *St.* 4 & 5 *Ph. & M.* 8. No Perſons ſhall take away any Maid Child unmarried under the Age of 16 out of the Poſſeſſion, and againſt the Will of her Father, or of ſuch Perſon to whom the Father by his Will, or other Act in his Life-time, ſhall appoint, bequeath, give, or grant the Governance of ſuch Child, *&c.*

And if any ſhall take away ſuch Child from the Poſſeſſion, *&c.* againſt the Will of the Father, or Mother of ſuch Child, *&c.*

And if any ſhall take away and deflour, *&c.* ſuch Child, againſt the Will, or unknowing of the Father, if living, or of the Mother of ſuch Child, having the Cuſtody, or Governance of ſuch Child, if the Father be dead, *&c.*

And by this Act 2 other Guardianſhips are allowed; *viz.* Guardianſhip by Nature, or by Aſſignation. 3 *Co.* 38. *b.*

And therefore, upon the Conſtuction of this Act, the Mother after the Death of the Father, ſhall have the Guardianſhip of his Heir, or other Son or Daughter, till it's Age of 16 Years. *Semb.* 3 *Co.* 39. *a.*

And this Cuſtody is inſeparable from the Perſon of the Mother; for if ſhe marries, it ſhall not be veſted in the Huſband. *R.* 3 *Co.* 39.

So, by the *St.* 4 & 5 *Ph. & M.* 8. The Father by Will, or other Act in his Life-time; may bequeath or appoint the Guardianſhip of his Child. *Semb. per Dyer*, that he may. *Dal.* 74. *R.* 3 *Co.* 39. *a.* *Semb. cont. Vau.* 178.

*Dal. or Sce nothing in Lough. on the 4. & 5. Ph. & M.*

But the Cuſtody of the Mother after the Death of the Father, of his Heir apparent after 14 till 16, was only for this Purpoſe, that he who takes her and marries her ſhall incur the Penalty of the *St.* 4 & 5 *Ph. & M.* *Semb.* 3 *Co.* 39. *a.*

## (E. 2.) By the *St.* 12 *Car.* 2.

But now, by the *St.* 12 *Car.* 2. 24. The Father, of Age, or under Age, by Deed, or by his Laſt Will in Writing, executed in the Preſence of 2 or more Witneſſes, may diſpoſe the Cuſtody and Tuition of his Child, or Children born, or in *Ventre ſa mere*, till their reſpective Ages of 21 Years or leſs Time, in Poſſeſſion or Remainder, to any, but a Popiſh Recuſant.

And ſuch Diſpoſition ſhall be good againſt all claiming as Guardian in Socage, or otherwiſe.

And ſuch Perſon may maintain Treſpaſs, or Raviſhment of Ward againſt any who detains ſuch Child, and may recover Damages in ſuch Action for the Benefit of ſuch Child.

And may take into his Cuſtody, to the Uſe of ſuch Child, all Profits of Lands Tenements and Hereditaments of ſuch Child, and his Goods Chattles and Perſonal Eſtate, and may bring ſuch Actions as Guardian in Socage might do.

The Guardian appointed by the *St.* 12 *Car.* 2. has the ſame Intereſt in all Reſpects as a Guardian in Socage had before, except as to the Time and *Modus habendi*. *Vau.* 179.

And therefore, he cannot by Deed, or Will, transfer the Cuſtody of his Ward to another. *Vau.* 179, *&c.* *R. Eq. Ca.* 42. *

* 2d Part of 2 *Mod. Ca.*

Nor ſhall it go to his Executor or Adminiſtrator. *Vau.* 180, 182.

And if the Guardian dies, it determines, as if it was never diſpoſed. *Vau.* 185.

If a *Fême* Guardian marry, the Gardianſhip is not transferred to the Huſband, nor ſhall be forfeited by the Attainder, or Miſdemeanor of the Huſband. *Eq. Ca.* 138. *

* 2d Part of 2 *Mod. Ca.*

So the Ward has the ſame Remedy againſt his Guardian by this Act, as there was before againſt a Guardian in Socage. *Vau.* 179.

But the Mother cannot by her Deed, or Will, diſpoſe the Cuſtody of her Son. *Vau.* 180.

So, if the Father deviſe his Land to *B.* during the Minority of his Heir for his Benefit, this does not amount to a Deviſe of the Cuſtody of the Heir. *Vau.* 184.

So, if he deviſe the Cuſtody of his Heir, without ſaying, for what Time, it will be void for the Uncertainty, if the Heir was above 14. *Per Vau.* 184, 5.

Otherwiſe, if he was under 14; for then it will be good till ſuch Age. *Vau.* 184.

So,

So, if a Freeman of *London* deviſe the Cuſtody of his Son, it will be void; for by the *St.* 12 *Car.* 2. 24. the Cuſtom of *London* is ſaved. *R.* 1 *Sid.* 363.

## (F) Guardian by Election.

### (F. 1.) Of the Heir himſelf.

IF a Man die ſeiſed of a Rent-Seck, Common of Paſture, or ſuch Hereditament as does not lie in Tenure, and of no other Hereditaments, his Heir being within 14 Years, the Heir having no Guardian aſſigned, &c. may chuſe his Guardian. *Co. L.* 87. *b.*

Frequently done on y^e^ circuit. 2. Ves. 375.

### (F. 2.) Of the Court.

If an Infant be of ſuch a tender Age, that he cannot chuſe, a Guardian may be aſſigned to him.

If he ſue, or be ſued in *B. R.* or *C. B.* a Guardian may be aſſigned for him by the Court. *Vide Pleader*, (2 C. 1, 2.)—*Vide Chancery*, (3 R. 1, 2)

So, in the Spiritual Court, it is uſual to aſſign a Curator to the Infant. 2 *Jon.* 90. And it may be done as to Perſonal Eſtate. 2 *Lev.* 163. But see 4. Burn. v. 3. p. 143b.

And the Ordinary, when he aſſigns ſuch Curator, may take a Bond from him for Performance of the Truſt. *Semb.* 2 *Lev.* 163.

And the Bond may be taken to him and his Commiſſary. *Dub.* 2 *Lev.* 163.

So, if the Father or Guardian do Wrong to the Infant, any one may ſue as Guardian to the Infant. *R. Hard.* 96.

When *Chancery* will appoint, or remove a Guardian, *Vide* in *Chancery*, (3 O. 1, &c.)

## (G) Guardian by Cuſtom.

AS to Guardian, by Cuſtom of a Manor, for a Copyholder, *Vide Copyhold*, (K. 5.)

### (G. 1.) Orphans.

By the Cuſtom of *London*, the Mayor and Aldermen of *London* have the Cuſtody of every Orphan within the City, *viz.* when any one free of the City dies, leaving an Orphan within Age, and not married. 1 *Rol.* 550. *l.* 40. And Cuſtody of the Lands and Goods of the Orphan was given by the *St.* 1. *R.* 2. *Rot. Par. N°.* 130. *R. Hob.* 247.

So, by Cuſtom within other Cities and Burroughs. *Adm.* by the *St.* 4 & 5 *Ph. & M.* 8.

And they have the Cuſtody of Males till the Age of 21 Years, of Females till 18 or Marriage. 1 *Sid.* 250.

And therefore, the Mayor and Aldermen of *London* have the Government of the Body, Lands, and Chattles of an Orphan. 1 *Sid.* 250.

Tho' the Land lies out of *London*. *Semb.* 1 *Sid.* 250.

Tho' the Father deviſe the Guardianſhip to another; for by the *St.* 4 & 5 *Ph. & M.* 8. and 12 *Car.* 2. 24. the Cuſtom of *London*, and other Burroughs as to Orphans, is ſaved.

Tho' the Father at the Time of his Death did not live in *London*. *Semb. cont.* 1 *Sid.* 250.

So the Wife of a Freeman is within the Cuſtom. 1 *Rol.* 550. *l.* 40.

After the Death of a Freeman of *London*, the Mayor and Aldermen may ſummon his Widow or Executor, to appear at a Court of Orphanage, and give Security to exhibit an Inventory. 1 *Rol.* 550. *l.* 45. *Hob.* 247.

The Chamberlain of *London* is a Corporation Sole, able to take a Bond or Recognizance to him and his Succeſſors, for Orphans. *R.* 4 *Co.* 64. *b.*

And may oblige an Executor to give Security for Performance of the Will, and Payment of Legacies to the Orphan. *Hob.* 247.

And if the Executor or Adminiſtrator refuſe an Inventory, or Security, he may commit him till Compliance. 1 *Rol.* 550. *l.* 45. *Hob.* 247.

Tho' he had given Security before to the Spiritual Court to account. 1 *Rol.* 550. *l.* 35. *Hob.* 247.

And if the Executor or Adminiſtrator be not a Freeman, nor lives within the City, *Chancery* will aſſiſt in the Security. *Semb. Ca. Ch.* 203.

So, if a Man agree before Marriage, that his Wife may deviſe 200*l.* which ſhe deviſes to Orphans; the Court will oblige the Huſband to give Security for the Money, tho' he had given a Judgment before for Security. 1 *Rol.* 550. *l.* 30.

So they may commit an Orphan to the Cuſtody of another. 1 *Sid.* 250.

So, if any one take an Orphan out of their Cuſtody, he may be impriſoned till he produce the Infant. *R.* 1 *Sid.* 250.

And if there be a Woman free of the City, or the Widow of a Freeman, the Cuſtom, if there be ſuch a one, ſhall be reaſonable as to her. *Hob.* 247.

Money due to an Orphan from the Chamber of *London* is a Debt, and not a Depoſit. *Ca. Ch.* 182.

And the whole Perſonal Eſtate, which belongs to an Orphan ought to be paid there, and the Chamberlain of *London* pays Intereſt for it. *Vide Ca. Ch.* 182.

So a Mortgage in Fee ſhall be reputed Part of his Perſonal Eſtate. *Ca. Ch.* 285.

And an Eſtate which he had as Reſiduary Legatee. *Ca. Ch.* 310.

Tho' he was likewiſe Executor, and had not made his Election. *R. Ca. Ch.* 310.

But Land of Inheritance is not Part of the Eſtate of an Orphan.

Nor a Leaſe, which attends the Inheritance. 1 *Ver.* 104. 2 *Ver.* 57.

Nor a Leaſe to the Father, who afterwards purchaſes the Fee in another Name. *R.* 1 *Ver.* 104.

Nor Receipts in Chymiſtry, Phyſic, Surgery, *&c.* 1 *Ver.* 62.

(G. 2.) What Eſtate belongs to an Orphan.

By the Cuſtom of *London*, if a Freeman die, the Surplus of his Perſonal Eſtate, after his Debts and Funerals paid, ſhall be diſtributed, one Third to his Wife, another Third to his Children, and the other third Part he may diſpoſe of by his Will. *Sal.* 426.

If he has no Children, one Moiety ſhall be to the Wife and the other Moiety he may diſpoſe of. *Sal.* 426.

Or, if all his Children are advanced. 2 *Ver.* 665.

If he has no Wife, a Moiety ſhall be to the Children. *Sal.* 426. 2 *Ver.* 612.

So, if his Wife be advanced by Jointure, *&c.* 2 *Ver.* 665.

If he makes no Will, Adminiſtration ſhall be granted to the Wife, who after a Third due to her by the Cuſtom, and another Third to the Children, ſhall make a Dividend of the Remaining third Part between herſelf and the Children. *Sal.* 426.

If

If any Child die after the Father, before 21 unmarried, it's Share goes to the other Children. 2 *Ver.* 559.

If the Father advance any Child in his Life-time, he ſhall have no Part in the Diſtribution, except where the Father by his Will or other Writing declares expreſly, that it was only in Part of his Advancement; and then, if he puts his Share into Hotchpot, he ſhall have a Proportion with the other Children out of their whole Part. *Co. L.* 176. *b.* 12 *Co.* 113. 2 *Ca. Ch.* 160, 117. *Sal.* 426. 1 *Ver.* 216. 2 *Ver.* 630.

And the Share of the Child advanced ſhall be put into Hotchpot with the whole Perſonal Eſtate, and not with the third Part due only to the Children. *Co. Lit.* 176. *b. Semb.* 12 *Co.* 113. *Cont.* 1 *Ver.* 345. 2 *Ver.* 281, 630.

Any Proviſion will be an Advancement. 1 *Ver.* 189. *Cont.* unleſs it be upon Marriage. *Ver.* 61.

If the Father declares that his Daughter is advanced, ſhe is not excluded, unleſs he ſays, to what Value. 2 *Ver.* 630.

And if the Value to which ſhe is advanced does not amount to her Share, if ſhe puts it into Hotchpot, ſhe ſhall have her whole Share. *R.* 2 *Ver.* 630. *Eq. Ca.* 137.

If the Father declares by his Will, that the Money given to the Daughter was not a full Advancement, it is ſufficient, tho' by a ſubſequent Will he declares the contrary. *R.* 2 *Ca. Ch.* 117. *Vide* 2 *Ver.* 631.

If a Child advanced afterwards dies in the Life of his Father, the Diſtribution ſhall be to the ſurviving Children, without Regard to the dead one. 2 *Ca. Ch.* 119.

If the Father ſettles an Inheritance upon any Son, tho' he ſays, for his Advancement, he is not excluded from a Share of the Perſonal Eſtate. 2 *Ca. Ch.* 160. 1 *Ver.* 181.

So, if the Father ſettles an Inheritance upon a Daughter Co-heireſs. *R.* 1 *Ver.* 181, 216.

If a Daughter marry in the Life of her Father againſt his Conſent, and he is not reconciled before his Death, ſhe ſhall loſe her Portion. *R.* 1 *Ver.* 354.

If the Father by his Will declare his Son advanced to ſo much, Proof of more ſhall be allowed. *Semb. Eq. Ca.* 137.

If there be no Wife, the Whole ſhall be divided among the Children. 2 *Vent.* 341. *viz.* a Moiety by the Cuſtom, and a Moiety by the Statute of Diſtributions. *Sal.* 426.

And if any Child die within Age, his Part ſurvives to the others. 2 *Vent.* 341. *R. Prec. Ch.* 537.

If any Child have a Son and die in the Life of his Father, the other Children ſhall have the Whole, and the Son of the deceaſed Child ſhall have nothing. *Sal.* 426. For Grandchildren are not within the Cuſtom. *R.* 1 *Ver.* 397. *Eq. Ca.* 137. 2 *Sho.* 467.

If the Father ſettle an Eſtate of Inheritance in his Life-time upon his Son, he ſhall have a Share of the Perſonal Eſtate, without putting the Value of the Land in Hotchpot; for Land is not taken as an Advancement within the Cuſtom of the City. 2 *Ca. Ch.* 118, 160. 1 *Ver.* 345. 2 *Ver.* 754.

Tho' the Father covenant to lay out ſo much in the Purchaſe of Land for his Son, which is purchaſed in his Life-time. *R.* 2 *Ca. Ch.* 118. 1 *Ver.* 345.

So, if an only Child be advanced in Part, he ſhall have the whole Share of the Children, without putting his Part received into Hotchpot, which extends only to Children, not to the Wife. *Sal.* 426. *Semb. cont.* 2 *Lev.* 30. For there it is ſaid, that a voluntary Settlement upon a Son will be fraudulent upon the Cuſtom by which the Wife claims. *Ch. R.* 16.* *Acc.* 1 *Ver.* 234, 629, 630, 754.

* *Temp. Finch.*

But any Sum given in Money to a Son or Daughter by the Father, ſhall be taken for an Advancement. *R.* 2 *Ca. Ch.* 118.

So, a Term for Years aſſigned to a Son by the Father. *Semb.* 2 *Lev.* 130.

So a Gift or Preſent after Marriage ſhall be taken in Hotchpot, tho' they are no Advancement to bar from a Share of the Perſonal Eſtate. 1 *Ver.* 61.

A Legacy for Mourning goes out of the Legatory Part. 2 *Ver.* 240.

So, a Deviſe to a Truſtee for a Daughter. 2 *Ver.* 754.

When an Orphan attains his full Age, he ſhall have his Proportion with Cuſtomary Intereſt. 2 *Vent.* 341.

Or, if it be a Woman, when ſhe marries. 2 *Vent.* 341.

Tho' the Woman die after Marriage before the Age of 21 Years. *R.* 1 *Ver.* 89.

So an Orphan ſhall have his Share, tho' his Father die within the Province of *York*; for the Cuſtom of *London* ſhall be preferred to the Cuſtom within the Province of *York*. 2 *Ver.* 48, 82, 111. *Vide Chancery*, (3 D. 3.)

So an Orphan after 21 may diſpoſe of his Orphanage Part, tho' it be not received; but not before 21. *Pr. Ch.* 537.

And if he die inteſtate, it ſhall be diſtributed according to the *St.* 22 & 23 *Car.* 2. *c.* 10. *Pr. Ch.* 537.

So, if he die within Age, tho' his Orphanage Part ſurvives to the other Orphans, if he has any Part by the Death of another Orphan as Survivor, that ſhall be diſtributed. *Pr. Ch.* 537.

But before Recovery or Receipt by an Huſband of the Share of his Wife, who was an Orphan, the Intereſt does not veſt in him. 2 *Vent.* 341. *R. Ca. Ch.* 182.

And he cannot diſpoſe of it by his Will. *R.* 2 *Vent.* 341.

And if he gives it to the Wife in Compenſation for her Dower, his Wife ſhall have her Dower, and likewiſe the Money due to her as an Orphan. *R. Ca. Ch.* 182.

If the Huſband deviſe a Leaſe, Books, *&c.* the Wife by Cuſtom ſhall have a Moiety of the ſpecifick Legacies, and likewiſe of the other Perſonal Eſtate. *R.* 2 *Ver.* 110.

And the ſpecifick Legatee ſhall have no Recompence out of his Teſtamentary Part. *R.* 2 *Ver.* 111.

So a Settlement by a Freeman in Truſt for himſelf for Life, and afterwards to his Grandchildren, will be a Fraud upon the Cuſtom. *R.* 2 *Ver.* 612, 635.

Otherwiſe, if he makes a Gift to his Grandchildren in his Life-time. 1 *Ver.* 612.

Or purchaſes Land in his Life-time. 2 *Ver.* 612.

Or gives the Whole to one Daughter in his Life-time. 2 *Ver.* 612.

So a voluntary Settlement, by a Freeman, of a Term, does not bind his Wife. *R.* 2 *Lev.* 130. 2 *Ver.* 98.

So a Father Freeman of *London* cannot by his Will diſpoſe of his Perſonal Eſtate to the Prejudice of the Cuſtomary Part of his Children, and Wife. 1 *Lev.* 227. *R.* 1 *Ch. R.* 84.

Nor can he by Will direct, that the Share of the Infant ſhall not ſurvive, if he dies within Age. *R. Wild cont.* 2 *Vent.* 341.

Or, that if the Infant die within Age, his Share ſhall go to another. *R. Ca. Ch.* 199. 2 *Vent.* 341.

Yet he may direct by Will, that if they all die, the Survivor ſhall have their Shares. *R.* 1 *Lev.* 227. *but Lev. makes a Quære.*

So, if an Huſband, being an Orphan, marry a Woman with a Portion, and die within Age, the Wife ſhall not be relieved for any Part of the Portion of her Huſband, which by the Cuſtom ſurvives. *Semb.* 1 *Ch. R.* 26.

So, if the Huſband ſettle an Eſtate upon his Wife in Lieu of her Cuſtomary Part, he may diſpoſe of it. *R.* 1 *Ver.* 6.

So, if the Huſband acknowledge a Judgment without Conſideration, to ſecure Money to be paid after his Death; this does not prejudice his Debts upon ſimple Contract, nor the Cuſtomary Share of his Wife or Children, but only his Legatary Part. *R.* 2 *Ver.* 202.

So a Term for Years taken by a Freeman upon his Purchaſe of the Inheritance, is not Part of his Perſonal Eſtate within the Cuſtom. 2 *Ver.* 57.

The Cuſtom ſhall not be eluded; and therefore, a Settlement in Fraud of the Cuſtom ſhall be avoided. *Eq. Ca.* 137.

(G. 3.) Allowance to an Orphan.

The Mayor and Aldermen make an Allowance to Orphans for Maintenance, in Proportion to their Eſtate. *D.* 2 *Vent.* 341.

And at their Age, or Marriage, their Eſtate with Intereſt is paid to the Orphans. 2 *Vent.* 341.

(G. 4.) Marriage.

By the Cuſtom of *London*, the Mayor and Aldermen have the Care of the Marriage of every Orphan within their Cuſtody.

And if any marry ſuch Orphan within the Age of 21 without their Licence, they ſhall be fined according to the Quality and Portion of the Orphan, and committed to *Newgate* till Payment. *R.* 2 *Lev.* 32.

Or, at leaſt, ſhall give Bond for the Payment.

Tho' the Eſtate of the Huſband deſerves a larger Portion than the Orphan had.

And it is ſufficient to ſay, *that he married ſuch an one being an Orphan without Aſſent*, tho' it is not ſaid, *that the Marriage was within the City.* *R.* 2 *Lev.* 32.

Tho' it is not ſaid, *that he had not a reaſonable Excuſe for it*; for that ſhall not be intended, unleſs it be ſhewn. *R.* 2 *Lev.* 32.

Tho' it is not ſaid, *that he took her out of the Cuſtody of the Mayor and Aldermen*; for ſhe is in their Cuſtody whereſoever ſhe is. *R.* 2 *Lev.* 32.

## (H) Remedy by a Guardian.

### (H. 1.) Right of Ward.

IF Tenant in *Chivalry* die in the Homage of the Lord, and a Stranger enter into the Land, or take the Body of his Heir within Age, the Lord may have Writ of Right of Ward. *F. N. B.* 139. *B.*

And he may have it for the Land and Body together, or for the Land, or Body by itſelf. *F. N. B.* 139. *C.*

So the Lord *Paramount* may have it for the Land and Body of the *Meſne*. *F. N. B.* 139. *E.*

Or, the Lord by Reaſon of Ward. *F. N. B.* 139. *D.*

So a Guardian in Socage may have Right of Ward for the Land and Body by Reaſon of Ward. *F. N. B.* 139. *H.*

So he ſhall have Right of Ward for the Body in his own Right. *F. N. B.* 139. *H.*

But a Guardian in Socage ſhall not have Right of Ward for the Land; for he is only a Bailiff to his Ward for the Land, and has no Right to the Land. *F. N. B.* 139. *H.*

Right of Ward may be ſued by *Juſticies* in the County, or in *C. B.* *F. N. B.* 139. *F.*

If

If it be ſued by *Juſticies*, the Plaintiff may remove it by *Pone* into *C. B.* without Cauſe, and the Defendant with Cauſe, as in *Replevin*. *F. N. B.* 139. *G.*

By the *St. Mert.* 20 *H.* 3. 6. In Right of Ward the Plaintiff ſhall recover *Valorem Maritagii*, and the Defendant ſhall be impriſoned till he ſatisfy the Plaintiff for his Default, and the King for his Treſpaſs. 2 *Inſt.* 90.

## (H. 2.) Ejectment of Ward.

So, if a Guardian be ouſted of the Body and Land of his Ward, he may have a Writ *de Ejectione Cuſtodiæ*. *F. N. B.* 140.

Or he may have an Ejectment for the Land only. *F. N. B.* 140. *A.*

And a Guardian in Socage ſhall have a Writ *de Ejectione Cuſtodiæ* for the Land, as well as a Guardian in *Chivalry*. *F. N. B.* 140. *C.*

So, a Grantee of the Ward. *F. N. B.* 140. *B.*

## (H. 3.) Raviſhment of Ward.

So, by the *St. W.* 2. 35. A Guardian in *Chivalry* may have a Raviſhment of Ward, if any one takes the Body of his Ward. 2 *Inſt.* 439.

So a Guardian in Socage, by the Equity of *W.* 2. 24, which gives a Writ *in Conſimili Caſu*, ſhall have a Raviſhment of Ward. 2 *Inſt.* 439. *F. N. B.* 140. *D.*

So every Anceſtor, Male or Female, ſhall have a Raviſhment of Ward againſt him, who wrongfully takes an Heir apparent Male, or Female. *R.* 3 *Co.* 38. *b.*

So an Executor ſhall have it for a Ward, which was taken out of the Poſſeſſion of his Teſtator. 11 *H.* 4. 55. *a.*

But it does not lie by a Father, for taking and marrying his Son after his full Age; for then he may marry without the Conſent of his Father. *R. Mar. Pl.* 8.

## (H. 4.) Information.

So, by the *St.* 4 & 5 *Ph. & M.* 8. If any above 14 convey away any Woman Child unmarried under 16, out of the Poſſeſſion and againſt the Will of her Father, Mother, or ſuch Perſon as ſhall have by any lawful Ways or Means the Order and Governance of her, except it be by or for the Maſter or Guardian of ſuch Woman Child, *&c.* he ſhall ſuffer two Years Impriſonment without Bail.

And if any Woman Child above 12 and under 16, conſent to a Contract of Matrimony with any, who ſo takes her away againſt the Will, or unknowing of her Father, or if he be dead, of her Mother, having the Cuſtody or Governance of her, the next of her kin, to whom the Inheritance ſhould deſcend after her Deceaſe, ſhall enjoy all her Lands, Tenements, *&c.* ſhe had at the Time of ſuch Aſſent, during the Life of him who ſo contracts Matrimony with her.

An Information lies upon this Statute in *B. R.* as well as in the Star-Chamber, or before Juſtices of Aſſiſe. *R.* 2 *Lev.* 179.

And an Information lies, where the Woman taken has a Real Eſtate, tho' no Goods. *R.* 2 *Lev.* 179.

But it ſhall not be within this Statute, if the Son of *B.* to whom the Mother entruſts the Care of her Daughter, marries her in a publick Manner, without the Privity of the Mother. *Semb.* 3 *Mod.* 85.

Or,

Or, if he does not uſe Force or Craft to compaſs the Marriage. *Semb.* 3 *Mod.* 169.

Or, if the Mother aſſent at any Time, tho' ſhe afterwards diſagree. 3 *Mod.* 169.

So an Information lies againſt any Perſon, who takes out of another's Cuſtody, and marries his Daughter and Heir. *R.* 1 *Sid.* 387. 1 *Lev.* 257. *Cro. Car.* 557, 558. *Dub.* 5 *Mod.* 221. *Carth.* 385.

## (H. 5.) Treſpaſs.

So, by the Common Law, Treſpaſs lies againſt him, who takes, detains, or marries his Ward. 2 *Inſt.* 90.

So Treſpaſs lies by every Anceſtor Male, or Female, againſt him, who wrongfully takes the Heir apparent. *R.* 3 *Co.* 38. *b.*

By a Father or Mother Guardian by Reaſon of Nurture, againſt a Stranger, who takes the Infant from them. *R. Mo.* 738.

And in an Action upon the Caſe by a Father for the Marriage of his Son and Heir, it is not neceſſary to ſay, that he is within Age. *Sti.* 216.

Nor, *cujus Maritagium ad ipſum pertinet*; for it belongs to him by Law. *R. Sti.* 216, 217, 303.

But Treſpaſs does not lie for taking and carrying away a Son or Daughter who is not Heir. *R. Cro. El.* 770.

Nor, for a Battery, or Impriſonment. *R. Cro. El.* 55, 770. *Vide Treſpaſs*, (B. 5.)

Nor an Action upon the Caſe for the Battery of his Heir, being his Apprentice, whereby he became decrepit, and the Father loſt his Marriage: for the Loſs of the Marriage of an Heir is not a Cauſe of Action, except where he is taken and married by a Stranger. *R. Cro. El.* 55.

Nor, for the Defamation of his Daughter, whereby the Father loſes her Marriage. *Cro. El.* 770.

So an Action lies by the Father for the Marriage of his Son and Heir, after his full Age. *Jon.* 411, 412.

## (H. 6.) Intruſion of Ward.

If the Ward himſelf, during his Nonage, had entred upon the Land, and ouſted the Lord, he might have a Writ of Intruſion of Ward againſt him. *F. N. B.* 141. *A.*

And it lies after the full Age of the Heir, as well as during his Nonage. *F. N. B.* 141. *E.*

## (H. 7.) *Valore Maritagii.*

So, if the Heir had married himſelf without the Aſſent of the Lord, after convenient Marriage tendred to him, the Lord might have a *Valore Maritagii* for the Value of the Marriage. *F. N. B.* 141. *D. F. G.*

For more concerning *Guardian*, *Vide Accompt*, (A. 2.—E. 3.)—*Chancery*, (3 O. 1. &c.)—*Copyhold*, (K. 5.)—*Prærogative*, (D. 26, 27.)—*Prohibition*, (G. 20.)—*Waſt*, (F. 1.)

# GARNISHMENT.

*Vide Abatement*, (I. 30.)—*Attachment.*—*Pleader*, (2 X. 8, &c.)

# GARRANTY.

## (A) Warranty; By what Words it ſhall be.

A Warranty is a Covenant Real annext to Lands or Tenements, whereby a Man and his Heirs are bound to warrant the ſame Lands, and to render in Value, if they are evicted by a former Title. *Co. L.* 365. *a.*

Warranty is expreſs, or implied. *Co. L.* 365. *a.*

No Word in Law makes an expreſs Warranty, except the Word, *Warrantizo. Lit. S.* 733.

But a Feoffment by the Word, *Dedi*, implies a Warranty to the Feoffee and his Heirs, during the Life of the Feoffor. *Co. L.* 384. *a.*

And before the *St. quia Emptores terrarum*, 18 *Ed.* 1. 1. If a Feoffment was by *Dedi*, *Tenendum of the Feoffor and his Heirs*, the Heirs as well as the Feoffor himſelf were bound to Warranty in reſpect of the Tenure. *Co. L.* 384. *a.*

So, in an Exchange, the Word, *Excambium*, imports a mutual Warranty. *Co. L.* 384. *a.*

So, in a Partition, it is implied that the one warrants the other. *Co. L.* 384. *a.*

So, in *Homage Auncеſtrel*, the Lord is bound to warrant his Tenant. *Co. L.* 384. *a.*

So, if a Gift in Tail, or Leaſe for Life be by or without Deed, rendring Rent, the Donor, or Leſſor is bound to Warranty. *Co. L.* 384. *b.*

So, if the Heir aſſign Dower, he is bound to Warranty. *Co. L.* 384. *b.* 2 *Rol.* 738. *l.* 50.

But, *Conceſſi*, does not imply a Warranty. *Co. L.* 384. *a.*

So, *Dedi*, in Letters Patent of the King does not import a Warranty; for the King is not bound to Warranty except by expreſs Words. 2 *Inſt.* 269.

So a Grant, *cum clauſulâ Warrantiæ*, theſe Words do not create a Warranty. 2 *Rol.* 739. *l.* 17.

What Words make a Covenant expreſs, or in Law, *Vide Covenant*, (A. 1, &c.)

## (B) Who are bound by a Warranty.

AN expreſs Warranty never binds the Heir to Warranty, unleſs he be named: as, *Ego & hæredes mei warrantizabimus, &c.* *Co. L.* 383. *b.* 384. *b.*

But an Exchange, Partition, *Homage Auncеſtrel*, which are Warranties in Law, bind the Heir to Warranty. *Co. L.* 384. *a.*

So, if a Father and his Heir apparent join in a Warranty, the Heir is doubly bound, by his own Warranty and as Heir to his Father. *R. Mo.* 20.

If 2 join in a Warranty, and the one dies, the Heir and the Survivor may be vouched. *Mo.* 20.

Or the Survivor alone may be vouched, at Election. *Mo.* 20.

## (C) To whom a Warranty extends.

IF a Man warrant Land without ſaying, to whom, it ſhall be intended to the Feoffee. *Co. L.* 383. *b.*

If he warrant to *B.* without more; this extends only for his Life, for Default of the Words, *his Heirs*. *Co. L.* 47. *a.* 384. *b.*

Tho' he warrant to *B. againſt him and his Heirs*. *Cro. El.* 602.

So, if a Man warrant, without ſaying, *for him and his Heirs*, it will be a Warranty for his Life only. *R. Cro. El.* 602.

But if a Man warrant to *B. and his Heirs*, the Warranty extends to the Heirs. *Vide Co. L.* 47. *a.*

So, *Dedi*, extends to the Feoffee and his Heirs, during the Life of the Feoffor. *Co. L.* 384. *a.*

So an Exchange, Partition, *Homage Auncеſtrel* import a Warranty to the Party and his Heirs. *Co. L.* 384. *a.*

So, if there be a Feoffment *to A. and his Heirs*, and a Warranty to him *in formâ prædictâ*, that extends to his Heirs. *Co. L.* 385. *b.*

So, if a Warranty be *to A. and his Heirs*, it ſhall be general againſt all Perſons, tho' it does not ſay, *againſt all Perſons*. *R.* 2 *And.* 118.

So, if a Man warrant to *B. his Heirs and Aſſigns*, this extends to all Aſſigns and their Aſſigns *toties quoties*, for ever. *Co. L.* 384. *b.*

If, to *A. and B. & eorum Hæredibus & Aſſignatis*, it extends to an Aſſignee of the Heir of the Survivor, *&c.* *Co. L.* 384. *b.*

So it extends to an Aſſignee of Part of the Land. *Co. L.* 385. *a.*

So it extends to an Aſſignee by *Parol*. *Co. L.* 385. *b.*

So, if a Feoffee makes a Gift in Tail, or a Leaſe for Life, Remainder in Fee, the Donee, or Leſſee may vouch as Aſſignee; for his Eſtate and the Remainder make but one Eſtate. *Co. L.* 385. *a.*

If there be a Feoffment to *A.* and *B.* and *A.* aſſigns his Part, *B.* might vouch for his Moiety. *Co. L.* 385. *a.*

If there be a Feoffment to 3, and one releaſes to the two others, they may vouch. *Co. L.* 385. *a.*

If there be a Feoffment to *A.* who enfeoffs *B.* who re-enfeoffs the Heir of *A.* he may vouch as Aſſignee. *Co. L.* 385. *b.*

But, generally, a Warranty does not extend to Aſſigns, unleſs they are named. *Co. L.* 384. *b.*

If there be a Feoffment to *A. and B. their Heirs and Aſſigns*, and one of them aſſigns, it does not extend to ſuch Aſſignee. *Co. L.* 385. *b.*

So a Warranty to one, *his Heirs and Aſſigns*, does not extend to an Aſſignee of Part of the Eſtate; as, if the Feoffee makes a Gift in Tail or a Leaſe for Life, the Donee or Leſſee is not an Aſſignee, but he may vouch his Donor or Leſſor, and ſo take Advantage of the Warranty. *Co. L.* 385. *a.*

So, if the Donee make a Feoffment, the Feoffee cannot vouch as Aſſignee, but muſt vouch his Feoffor. *Co. L.* 385. *a.*

If there be a Feoffment to *A.* who enfeoffs *B.* who re-enfeoffs *A.* he or his Heirs cannot vouch; for he cannot be Aſſignee to himſelf. *Co. L.* 385. *b.*

Yet by an Exchange, or Feoffment with the Word, *Dedi*, the Aſſignee may rebut, tho' he cannot vouch. *Co. L.* 384. *b.*

So, if there be a Feoffment with Warranty, without ſaying, *to the Aſſigns*, yet an Aſſignee, or any Tenant of the Land may rebut. *Co. L.* 385. *a.*



So,

So, tho' a Diſſeiſor, Abator, Intruder, &c. cannot vouch or have a *Warrantia Chartæ*, becauſe he has no Privity, yet he may rebut. *Co. L.* 385. *a.*

So *Ceſty que uſe* may rebut, tho' he comes in the *Poſt*. *R. Sal.* 685.

But a Man who claims *paramount*, and not under the Warranty, cannot vouch, or rebut: as, if a Feoffment be to 2 Brothers, with Warranty to the the eldeſt and his Heirs, who dies without Iſſue; the youngeſt cannot vouch or rebut, for he does not claim as Heir, but by the Feoffment. *Co. L.* 385. *a.*

If there be a Gift in Tail with Warranty to the Donee, his Heirs and Aſſigns, who makes a Feoffment and dies without Iſſue; the Feoffee cannot vouch, or rebut, for the Eſtate to which the Warranty was annext, is determined. *Co. L.* 385. *a.*

When a Covenant binds or extends to Heirs or Aſſigns, *Vide Covenant*, (B. 1, &c.—C. 1, &c.)

## (D) By what Conveyance created.

WARRANTY may be created by any Conveyance of Lands, Tenements, or Hereditaments: As, by Fine, Feoffment, &c. *Co. L.* 371. *a.*

By Gift in Tail, or Leaſe for Life. *Co. L.* 371.

By Fine *Sur Grant and Render*. *Carth.* 141.

So, by Releaſe or Confirmation, which enlarges the Eſtate. *Co. L.* 371, 385. *a.*

So, tho' the Releaſe or Confirmation paſs no Eſtate or Right, and the Releaſor has nothing in the Land. *Co. L.* 371. *b.* 385. *a.*

And ſuch Releaſe, &c. is ſufficient for a Warranty to the Aſſignee. *Dub. Co. L.* 371. *b.* *Acc. Co. L.* 385. *a.*

So a Warranty in Law may be created by Will: As, if a Man by his Will deviſe Land in Tail, or for Life, rendring Rent. *Co. L.* 386. *a.*

But an expreſs Warranty cannot be created without Deed. *Co. L.* 386. *a.*

And therefore, a Deviſe in Fee with Warranty; the Warranty is void, for a Will is no Deed. *Co. L.* 386. *a.*

## (E) To what Eſtates annexed.

A Warranty may be annexed to all Eſtates of Freehold or Inheritance, which paſs by Livery. *Co. L.* 366. *a.*

So, to Eſtates incorporeal which lie in Grant; as, Advowſons, Rents, Common, *Eſtovers*, &c. *Co. L.* 366. *a.*

Tho' the Rent, &c. be newly created, and was not *in Eſſe* before; for tho' there cannot be a prior Title to the Rent, there may be to the Land, by Eviction whereof the Rent will be loſt. *Co. L.* 366. *a.*

So, if a Rent newly created be given in Exchange for Land, or for Owelty of Partition, the Warranty in Law extends to it. *Co. L.* 366. *a.*

So, if a Rent-ſeck be releaſed with Warranty to the Tenant of the Land, altho' it enures by way of Extinguiſhment generally, it ſhall be annexed to it. *Co. L.* 366. *b.*

But a Warranty cannot be annexed to Chattels Real or Perſonal; for if a Man warrants them, the Party ſhall have Covenant, or Action upon the Caſe. *Co. L.* 101. *b.* 389. *a.*

Nor, to the Eſtate of Tenant by Statute, or *Elegit*. *Co. L.* 389. *a.*

(F) What

## (F) What Rights, or Titles are barred by Warranty.

WARRANTY extends to warrant the Land in the ſame Plight, as it was at the Time of the Warranty. *Co. L.* 388. *b.*

And therefore, if any Perſon have an elder Right at the Time of the Warranty, the Warranty extends to it. *Co. L.* 388. *b.*

So a Warranty extends to a Rent, Common, *&c.* iſſuing out of Land, which was diſcharged or ſuſpended at the Time of the Warranty. *Co. L.* 366. *b.* 388. *b.*

As, if the Grantee of a Rent diſſeiſe the Terretenant and make a Feoffment with Warranty; that extends to the Rent, for it was diſcharged at the Time of the Warranty. *Co. L.* 388. *b.*

So, if the Grantee releaſe to the Terretenant, with Warranty of the Tenements. *Co. L.* 366. *b.*

So a Right ſhall be barr'd tho' it deſcend in one Reſpect, and the Warranty in another: As, if Huſband and Wife ſue in Right of the Wife, they ſhall be barr'd by a collateral Warranty of the Anceſtor of the Huſband. *Co. L.* 365. *b.*

Or, if a Woman Heir of a Diſſeiſor enfeoff with Warranty, and afterwards marry the Diſſeiſee; in a *Præcipe* they ſhall be barr'd by the Warranty of the Woman. *Co. L.* 365. *b.*

So a Right not *in Eſſe* at the Time of the Warranty, but future, may be barr'd by Warranty: As, if a Father be diſſeiſed, and the Son releaſe with Warranty, tho' he had no Right at the Time but only *in futuro* upon the Death of his Father; for otherwiſe there would be a Circuity of Action. *Co. L.* 265. *a.*

Tho' the Warranty and Right deſcend to the Heir at the ſame Time: As, if *A.* Tenant for Life, Remainder to his Son, be diſſeiſed, releaſe with Warranty, and die, the Son is barr'd. *Co. L.* 388. *b.*

So, tho' the Warranty deſcends firſt, if the Right was *in Eſſe* in any of the Anceſtors at the Time of the Deſcent. *Co. L.* 388. *a.*

So a Right of Entry, or Action ſhall be barr'd by Warranty. *R. Sal.* 686.

## (G) What not.

BUT Warranty does not extend to naked Titles; As, to a Title of Entry for a Condition broken: for that cannot be deveſted, neither can there be an Action for it, and ſo no *Voucher*, or *Warrantia Chartæ*. *Co. L.* 389. *a.* 379. *b.*

So it does not extend to a Title of Entry by force of an Exchange. *Co. L.* 389. *a.*

Nor, to a Title of Entry for *Mortmain*, Conſent to a Raviſher, *&c.* *Co. L.* 389. *a.*

So, if made by a Parcener, *&c.* upon Alienation of his Part, it does not extend to avoid the Partition. *R. Mo.* 21.

So a Warranty does no extend to a Right, which commences after the Warranty made. *Co. L.* 388. *b.*

And therefore, if a Son has a Rent, Common, *&c.* out of the Land of his Father, who makes a Feoffment with Warranty, and afterwards the Son is diſſeiſed, and the Warranty deſcends; this does not extend to the Rent, which was put to a Right after the Warranty. *Co. L.* 388. *b.*

So, if a Woman who has a Rent, *&c.* intermarry with the Terretenant to whom *A.* releaſes with Warranty; this does not extend to the Demand of Rent by the Wife, or her Heir: for their Title of Action for it commences after the Warranty, *viz.* upon the Death of the Huſband, or Wife. *Co. L.* 388. *b.*

So, if the Grantee of a Rent grant it to the Terretenant upon Condition, who makes a Feoffment with Warranty; this does not extend to the Rent afterwards claimed for Breach of the Condition. *Co. L.* 389. *a.*

If Tenant in Tail, Remainder in Tail, levies a Fine with Warranty, and afterwards ſuffers an erroneous Recovery and dies without Iſſue; tho' the Warranty deſcends upon him in the Remainder, it does not bar him to have Error upon the Recovery. *Dub.* 2 *Rol.* 741. *l.* 35.

So it does not extend to an Eſtate in Reverſion, Remainder, or Poſſeſſion, which was not deveſted or put to a Right at the Time or before the Deſcent of the Warranty. *Co. L.* 388. *b.*

And therefore, if there be Tenant for Life, Remainder or Reverſion in Fee to *A.* and a collateral Anceſtor of *A.* releaſe to the Tenant for Life in Fee with Warranty, and die, and the Warranty deſcends upon *A.* His Remainder or Reverſion is not barred, for it was not deveſted. *Co. L.* 388. *b.*

So, if the Father has Land in Fee, and the Son has a Rent, Common, *&c.* out of the Land, the Father makes a Feoffment with Warranty; this does not extend to the Rent, *&c.* which was not deveſted. *Co. L.* 388. *b.*

So, if the Huſband make a Feoffment, and a collateral Anceſtor of the Wife releaſe with Warranty; this does dot bar her Right of Dower, which is not changed from it's original Eſſence. *Co. L.* 389. *a.*

## (H) What Warranties are Bars.

### (H 1.) Lineal Warranty; What ſhall be.

WARRANTIES are of 3 Kinds; Lineal, Collateral, or which commence by *Diſſeiſin*. *Lit. S.* 697.

Lineal Warranty is, where the Heir to the Warranty would have conveyed his Deſcent to the Lands (if there had been no Warranty) from the ſame Anceſtor, who made the Warranty. *Co. L.* 370. *a.*

As, if a Father ſeiſed in Fee makes a Feoffment with Warranty, and dies, the Warranty will be Lineal to his Son, for he would have made his Deſcent to the Land from his Father. *Lit. S.* 703.

So it will be a Lineal Warranty, if the Heir conveys his Deſcent by means of the Anceſtor who made the Warranty, tho' he does not make his Title immediately as Heir to him: As, if the Grandfather be diſſeiſed, and the Father releaſe with Warranty, and die in the Life of the Grandfather; his Warranty will be Lineal to the Son, for he claims by means of the Father, altho' he makes his Title to the Grandfather, who was laſt ſeiſed. *Lit. S.* 706.

So, if by Poſſibility the Heir could convey his Deſcent by means of ſuch Anceſtor: As, if the Father be diſſeiſed, and the eldeſt Son releaſe with Warranty, and die in the Life of his Father; his Warranty will be Lineal to the youngeſt Son. *Lit. S.* 707, 715.

If *A.* Tenant in Tail, and his eldeſt Son make a Feoffment with Warranty, and the eldeſt Son dies in the Life of his Father; this Warranty is Lineal to the Youngeſt Son of *A.* *R. Hut.* 22.

So

So it will be a Lineal Warranty, if the Heir derive his Title from the Anceſtor who made the Warranty, tho' he does not derive from him alone: As, if there be a Gift in Tail to Huſband and Wife and the Heirs of their Bodies, and the Huſband diſcontinue; the Warranty of the Huſband or the Wife is Lineal to the Iſſue in Tail, tho' he claims as Heir of both their Bodies. *Lit. S.* 714.

So, if there be a Gift to a Man and a Woman and the Heirs of their Bodies, who afterwards intermarry; tho' the Donees took by Moieties. *Co. L.* 375. *a.*

## (H. 2.) Collateral, What ſhall be.

But, where the Heir to the Warranty does not derive his Title from the Anceſtor, who made the Warranty, it will be a Collateral Warranty; becauſe his Title is collateral. *Lit. S.* 704, 705, 717.

As, if a Father diſſeiſe his Son, and make a Feoffment to another with Warranty, it will be a Collateral Warranty; becauſe the Son does not derive his Title from the Father. *Lit. S.* 704.

If the Father be diſſeiſed, and the youngeſt Son releaſe with Warranty, it will be Collateral to his eldeſt Brother. *Lit. S.* 707, 708.

So, if Tenant in Tail diſcontinue, a Releaſe by the Uncle with Warranty will be Collateral to the Iſſue in Tail. *Lit. S.* 709.

## (H. 3.) Collateral in Part, and Lineal in Part.

So the ſame Warranty may be Collateral in Part, and Lineal in Part: As, if the eldeſt Daughter enter, and enfeoff *B.* of all the Land, which deſcended to her and her Siſter, with Warranty, and die without Iſſue; the Warranty will be Collateral for the Moiety, which was the Part of the youngeſt Siſter, and Lineal as to the other Moiety. *Lit. S.* 710.

So a Warranty, which was collateral to ſome, may become Lineal to others: As, if a Man be diſſeiſed, and his youngeſt Son releaſe to the Diſſeiſor with Warranty, it will be Collateral to his eldeſt Brother and his Iſſues, but if he die without Iſſue, the Warranty becomes Lineal to the Iſſues of the youngeſt Son himſelf. *Co. L.* 371. *b.*

If Tenant in Tail diſcontinue, and his middle Son releaſe to the Diſcontinuee with Warranty, and die without Iſſue; the Warranty is Collateral to his eldeſt Brother; but if he afterwards die without Iſſue, it is Lineal to his youngeſt Brother. *Lit. S.* 708.

## (H. 4.) When Lineal Warranty ſhall be a Bar.

By the Common Law, all Warranties, which did not commence by *Diſſeiſin*, were Bars to the Heir upon whom they deſcended.

And therefore, if a Lineal Warranty deſcends upon the Heir to a Fee Simple, it will be a Bar to him without Aſſets. *Lit. S.* 711.

So a Lineal Warranty, which deſcends upon the Iſſue in Tail with Aſſets, will be a Bar, notwithſtanding the *St. de Donis* 13 *Ed.* 1. But this is by an equitable Conſtruction of the *St. of Gloc.* 3. *Co. L.* 374. *Vau.* 365.

But by Conſtruction upon the *St. de Donis*, a Lineal Warranty is no Bar to the Iſſue in Tail, without Aſſets by Deſcent from the ſame Anceſtor. *Co. L.* 374. *Vau.* 365. *Hut.* 22.

And they ought to be of equal Value with the Land warranted, at the Time of the Deſcent. *Co. L.* 374. *b.*

So they ought to be Aſſets in Fee Simple, and not in Tail, or *pur auter vie*. *Co. L.* 374. *b*..

So they ought to be Lands, or Tenements, Rents, *&c.* iſſuing out of Lands, and not Perſonal Inheritances. *Co. L.* 374. *b*. *Vide Aſſets.*

## (H. 5.) When Collateral Warranty ſhall be a Bar.

By the *St. Gloc.* 6 *Ed.* 1. 3. Warranty of the Father Tenant by Curteſy, either in the Life of his Wife, or afterwards, with Aſſets, ſhall be a Bar to the Heir, who claims the Inheritance on the Part of his Mother. 2 *Inſt.* 292.

And before this Statute, Warranty by Tenant by the Curteſy was a Bar to his Heir, without Aſſets. 2 *Inſt.* 292.

So Warranty of the Father, or Mother, Tenant for Life, ſince the *St. Gloc.* 3. without Aſſets will be a Bar to the Heir; for the Statute only remedies in the Caſe of a Tenant by the Curteſy. 2 *Inſt.* 292. *R. Sal.* 685.

So, Warranty of the Mother, Tenant in Dower, till the *St.* 11 *H.* 7. 10. *Co. L.* 381. 2 *Inſt.* 292.

So a Donee in Tail diſcontinuing, if his Wife after his Death releaſe to the Diſcontinuee with Warranty, it will be a Bar to the Iſſue in Tail. *Lit. S.* 713.

So, if a Donee in Tail, Remainder to *A.* his Siſter in Fee, levy a Fine with Warranty to the Uſe of *D.* and his Heirs, and die without Iſſue, *A.* and *B.* his Siſters being his Heirs; *A.* ſhall be barred by this Warranty for the Whole, tho' the Warranty deſcends to *B.* and her. *R.* 2 *Cro.* 217, 218.

But by the *St. of Gloc.* 3. Warranty of the Tenant by the Curteſy is no Bar to the Heir, without Aſſets. 2 *Inſt.* 222, 293.

So, by the Equity of this Statute, the Warranty of Tenant in Tail is no Bar, unleſs there be Aſſets in Fee Simple deſcended. 2 *Inſt.* 293. *Vide Ante*, (H. 4.)

So, if a Collateral Warranty be annexed to an Eſtate for 3 Lives, (which is good within the *St.* 32 *H.* 8. and no Diſcontinuance, but determined by the Death of the Tenant in Tail without Iſſue,) the Warranty does not bind after the Eſtate determined. *R. Cro. El.* 602.

And there was a Bill to prevent a Collateral Warranty's being a Bar, without Aſſets.

So now, by the *St.* 4 *An.* 16. *Sect.* 21. All Warranties by Tenant for Life made after the 1ſt Day of *Trinity* Term 1706, deſcending on him in Reverſion or Remainder, ſhall be void.

And all Collateral Warranties, made after that Time by any Anceſtor not in Poſſeſſion, ſhall be void as to his Heir.

# (I) What Warranties are no Bar.

## (I. 1.) Warranty, which commences by *Diſſeiſin.*

BUT Warranty, which commences by *Diſſeiſin*, does not bar the Heir upon whom it deſcends. *Co. L.* 366, 367. *Lit. S.* 698.

As, if the Father Tenant for Years or at Will of his Son's Land, make a Feoffment with Warranty. *Lit. S.* 698.

Or, if Tenant by Statute, or *Elegit* make a Feoffment. *Lit. S.* 698.

Or, Guardian in *Chivalry*, Socage, for Nurture, *&c.* *Lit. S.* 699. *Co. L.* 367 *b.*

So,

So, if a Man abate, intrude, *&c.* into Land, and make a Feoffment with Warranty. *Co. L.* 367. *a.*

If a Man enter before the Lord by Eſcheat, and make a Feoffment with Warranty. *Co. L.* 367. *a.*

So, if a Joint-tenant make a Feoffment of the Whole with Warranty, it ſhall be void for a Moiety. *Lit. S.* 700.

So, if a *Diſſeiſin* be made with Intent to make a Feoffment, or to have a Releaſe with Warranty; the Warranty will be void, tho' it be not a *Diſſeiſin* and Warranty together. *Co. L.* 367.

So, if he who makes the Warranty be of Covin with the Diſſeiſor, tho' the *Diſſeiſin* is not done immediately to the Heir upon whom the Warranty deſcends: As, if a Leſſee for Life, or Donee in Tail be diſſeiſed, a Releaſe with Warranty by the Anceſtor of the Leſſor, or Donor does not bind, if it was by Covin with the Diſſeiſor. *Co. L.* 366. *b.*

But if one Parcener enters generally, and makes a Feoffment of the Whole with Warranty; this is not a Warranty which commences by *Diſſeiſin*, and therefore binds the other Parcener as to a Moiety; for it was no *Diſſeiſin* to him who had no Seiſin, tho' the Freehold deſcended to both, but the Feoffment of one of them ſhews that his Entry gave him Seiſin of the Whole. *Co. L.* 374. *a.*

## (I. 2.) If the Warranty does not deſcend upon him, who claims the Land.

So, if a Warranty does not deſcend upon him, who claims the Land to which the Warranty was annext, it will be no Bar: As, if Tenant in Tail of Land of the Nature of *Borough Engliſh* diſcontinue with Warranty, and die, leaving 2 Sons; the youngeſt Son ſhall not be barred by the Warranty, tho' Aſſets deſcend: becauſe a Warranty always deſcends upon the eldeſt Son, who is Heir by the Common Law. *Lit. S.* 735.

So, if it was a Collateral Warranty. *Lit. S.* 735.

So, if the Warranty deſcends upon the Heir, who at the Time of the Deſcent of the Warranty is an Infant, and his Entry *congeable*, it is not barred by the Warranty, but he may afterwards enter and avoid the Eſtate within, or after his full Age. *Co. L.* 380. *R.* 1 *Co.* 140. *a.* 1 *And.* 311.

So, if a Woman, upon whom a Warranty deſcends, be *Covert* at the Time, and her Entry *congeable*. *Co. L.* 380. *b.*

## (I. 3.) If the Warranty be defeated.

So a Warranty is no Bar, if it be defeated: As, if the Eſtate, which a Man had at the Time of a Warranty made to him, be defeated, the Warranty is defeated. *Lit. S.* 741. (I. 3.) By Defeat of the Eſtate, to which, *&c.*

As, if Diſcontinuee of Tenant in Tail be diſſeiſed, and afterwards he or his Anceſtor releaſe to the Diſſeiſor with Warranty, and afterwards the Diſcontinuee enters; the Warranty is defeated, and the Iſſue in Tail may recover. *Lit. S.* 741.

So, if a Man by Fine warrant to *A.* and his Heirs, and the Uſe be declared to *A.* for Life, Remainder to others in Tail; the Warranty is defeated by the Limitation of the Uſe to ſeveral. *R. Mo.* 859.

So, by Limitation of a different Eſtate to *A.* from that to which the Warranty was granted. *R. Mo.* 859.

So, if Tenant for Life or in Tail, Remainder to *A.* in Tail or Fee, be diſſeiſed, and the Anceſtor of *A.* releaſe to the Diſſeiſor with Warranty, and

before his Death, the Tenant for Life enters; the Warranty is defeated. 2 *Rol.* 740. *l.* 45, 50.

(I. 4.) By Determination of the Eſtate.

So, if the Eſtate, which the Party had at the Time of the Warranty, be determined, the Warranty will be defeated: As, if the Anceſtor of him in Reverſion releaſe to the Tenant for Life, or for Years, with Warranty, and afterwards the Term determines, or the Leſſee dies; he in Reverſion may enter.

So, if *A.* make a Leaſe for Life, or Years, and his Son releaſe to the Leſſee with Warranty, and *A.* dies; after the Death of the Leſſee, or the Determination of the Years, his Son may enter. 2 *Rol.* 739. *l.* 40.

So, tho' there was a Releaſe with Warranty to the Leſſee and his Heirs; for the Warranty cannot enlarge his Eſtate. 2 *Rol.* 739. *l.* 35.

Tho' the Releaſe was to the Grantee in Fee of the Leſſee who had it for Life, Remainder to *A.* Remainder to the Leſſee in Fee; for the Warranty extends only to the Eſtate which he had at the Time of the Releaſe. 2 *Rol.* 739. *l.* 30.

So, if the Eſtate of him, upon whom a Collateral Warranty deſcends, determines, and another takes the Eſtate to whom the Warranty is Lineal, his Right revives; for the Warranty does not give a Right, but is only a Bar to the Recovery, and therefore, when a Warranty determines, is removed, or defeated, the Right revives. *Lit. S.* 708. *Co. L.* 372. *a.*

And a Warranty does not extinguiſh the Right, but only binds it as long as it ſtands in Force. *R. Sal.* 686.

(I. 5.) When a Warranty is not defeated.

But if an Eſtate be bound by a Warranty, and afterwards the Eſtate to which, *&c.* be defeated as to a particular Eſtate, the Warranty ſhall not be defeated: As, if Tenant for Life, Remainder to *A.* be diſſeiſed, and an Anceſtor of *A.* releaſes to the Diſſeiſor with Warranty and dies, and afterwards Tenant for Life enters or recovers; yet the Remainder will be bound by the Warranty. 2 *Rol.* 740. *l.* 40.

If Huſband and Wife are Tenants for Life, Remainder to a Son in Tail, and the Huſband makes a Feoffment with Warranty, and dies, and then the Wife enters by the *St.* 32 *H.* 8. whereby ſhe is remitted for Life; yet the Warranty will not be defeated as to the Son: for his Eſtate was bound by the Warranty before the Entry of the Wife. 2 *Rol.* 741. *l.* 5.

If *A.* having nothing in the Land levies a Fine of it with Warranty to *B.* who deviſes to *C.* and *C.* enfeoffs *A.* and his Son, and *A.* releaſes to the Son; the Warranty is not deſtroyed. *Jon.* 457.

## (K) How a Man ſhall take Advantage of a Warranty.

### (K. 1.) By *Warrantia Chartæ.*

A Man ſhall take Advantage of a Warranty by a Writ of *Warrantia Chartæ*, by *Voucher*, or by *Rebutter*. *Vide Co. L.* 365. *a.*

When a *Warrantia Chartæ* lies, and how the Proceedings ſhall be, *Vide in Pleader*, (3 N. 1, &c.)

### (K. 2.) By *Voucher.*

So, in an Action in which *Voucher* lies, a Man who has a Warranty, being impleaded, may *vocare ad warrantizandum* the Perſon bound to Warranty. *Vide Co. L.* 365. *a.*

In

In what Actions *Voucher* lies, and the Proceedings upon it, *Vide* in *Voucher*, (A. 1, &c.)

(K. 3.) By *Rebutter*:

So, if a Man who has a Warranty, be impleaded by him who made the Warranty, or by him upon whom the Warranty deſcends, he may by Plea rebut, or repel him, by Force of the Warranty. *Co. L.* 365. *a.*

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# GAVELKIND.

## (A) Gavelkind, What ſhall be; Deſcent of, and Cuſtoms belonging to it, &c.

GAVELKIND Land, that is, *Gave all kind*, is ſo called, becauſe this Cuſtom giveth to all the Sons alike. *Co. L.* 140. *a.* *Vide Somner.* *Vide Burrough Engliſh.*

The Lands in *Kent* generaly are of the Nature of Gavelkind, which Cuſtom there, is like the Common Law elſewhere. 1 *Sid.* 135, 138.

By the *St.* 18 *H.* 6. it is recited, that not above 30 or 40 Perſons at moſt had any Lands in *Kent*, which were not Gavelkind, the greateſt Part or well nigh all that County being of that Tenure.

And this Cuſtom obtains in *North Wales*, and other Places. *Lit. S.* 265. *Co. L.* 175. *b.* *Vide Parceners*, (B.)

And it was general in *Wales* till the Time of *H.* 8. *Pl. Com.* 129. *b.* *Dy.* 363. *b.*

Land of the Nature of Gavelkind is held by the Service of Socage, and not of *Chivalry*. *Cro. Car.* 561. 1 *Sid.* 138.

And therefore, the *St.* 31 *H.* 8. 3. which diſgavels Lands in *Kent*, whereof 34 Perſons there named were ſeiſed in Fee or Tail, ſays, that thoſe Lands ſhall deſcend as Lands never holden in Socage, but always held by Knight's Service deſcend.

Yet Gavelkind Land may be held of a Manor holden by Knight's Service.

And if the Gavelkind Land eſcheat, whereby it will be held in *Chivalry*, yet the Cuſtom is not thereby deſtroyed, when it ſhall be ſevered. *Per Twiſd.* 1 *Sid.* 138. *Semb. Cro. Car.* 562.

So, if it deſcend to the King, tho' it be privileged in the Hands of the King, the Cuſtom is not thereby deſtroyed. *Per Twiſd.* 1 *Sid.* 138. *Semb. Pl. Com.* 234. *b.* 247. *a.*

So, if the King be ſeiſed of Lands in the Nature of Gavelkind, and die having ſeveral Sons; the Whole deſcends to the King his Succeſſor, and the the younger Sons ſhall have no Part: for the Cuſtom is ſuſpended in the Hands of the King. *Cont. per Southcot. Pl. Com.* 234. *b.* *Acc. per Moile, Pl. Com.* 247. *a.*

If the King's Anceſtor die ſeiſed of Lands in Gavelkind, and the King has a Brother, the Land deſcends to the King and his Brother. *Pl. Com.* 247. *a.*

By the *St.* 31 *H.* 8. 3. The Lands of which 34, *viz.* The Lords *Cromwell, Burgh, Cobham, Windſor, S.r Tho.s Cheine, S.r Chriſtopher Hales, S.r Tho.s Willoughby, S.r Anth: S.t Leger, Sr. Edw.d Wotton, S.r Edw.d Boveton, S.r Roger Cholmly, S.r John Champneys, John Baker, Reynold Scott, John Guldford,*

*ford, Tho.s Kemp, Edward Thwaites, W.m Roper, Anth: Sands, Edw.d Iſaac Percival Hart, Edw.d Monyns, W.m Whetnall, John Fogg, Edm.d Fettiplace, Tho.s Hardres, W.m Waller, Tho.s Willford, Tho.s Moile, Tho.s Herlakenden, Geoffry Lee, James Hales, Hen: Huſſey, and Tho.s Royden* were ſeiſed in Fee or in Tail, ſhall be diſgavelled.

Land of the Nature of Gavelkind deſcends to all the Sons equally. *Co. L.* 140. *a.*

And if there be no Iſſue Male, to all the Daughters. *Som.* 7.

And if there be no Iſſue, to all the Brothers. *Semb. Co. L.* 140. *a. Som.* 7.

If one Son die in the Life of his Father having Iſſue a Daughter, it ſhall deſcend to the other Son and the Daughter. 1 *Sal.* 243. *Som.* 7.

So, if a Brother die having Iſſue, the Deſcent ſhall be to all the Brothers and the Nephew. *Som.* 7.

So, if a Rent be iſſuing out of Land of the Nature of Gavelkind, that ſhall deſcend to all the Sons; for it follows the Nature of the Land. *R.* 2 *Lev.* 87. 1 *Mod.* 97. 1 *Ver.* 489.

But if Land of the Nature of Gavelkind be granted with Warranty or upon Condition, the Warranty or Condition deſcends to the Heir by the Common Law. 1 *Mod.* 96. *Lit. S.* 736. *Co. L.* 376.

So, by the Cuſtom of Gavelkind, the Deſcent ſhall not be to all the Sons and Daughters; for Females do not take with Males. *St. Prær. Reg.* 17 *Ed.* 2. 16.

So other Cuſtoms are incident to Lands of the Nature of Gavelkind: As, that the Owner may deviſe them. *Cro. Car.* 562.

So he may alien them at his Age of 15 Years. *Bend. pl.* 52.

Tho' he has only the Reverſion. *Bend. pl.* 52.

Tho' they are of his own Purchaſe. *Bend. pl.* 52.

So upon his Sale he may make a Feoffment, and it will be good. *Bend. pl.* 52.

But a Feoffment, or Alienation within Age, unleſs it be for a Sale, is not allowed by the Cuſtom. *Bend. pl.* 52.

Nor a Feoffment, where he has only the Reverſion. *Bend. pl.* 52.

Or, where he himſelf purchaſed the ſame Lands within Age. *Bend. pl.* 52.

Or a Feoffment by him, who has only an Eſtate Tail. *R.* 2 *Cro.* 80.

So, by the Cuſtom of *Kent*, the Huſband ſhall be Tenant by the Curteſy, tho' he has no Iſſue. *Co. L.* 30. *a.* 111. *a.*

The Wife ſhall be endowed of a Moiety, *quamdiu Vidua & caſta vixerit. F. N. B.* 150. *O. R.* 1 *Leo.* 133. *Cro. El.* 121. *Cro. Car.* 562. 1 *Sid.* 77. *Vide St. Prær. Reg.* 17 *Ed.* 2. 16. 1 *Rol.* 558. *B. Co. L.* 33. *b.* 111. *a.*

And ſhe cannot waive her Dower by the Cuſtom, and take it according to the Common Law. *R.* 1 *Leo.* 62. *D. Cro. El.* 121. *R. Cro. El.* 825. *R. Mo.* 260. *Co. L.* 33. *b.*

And if the Plaintiff demands Dower at the Common Law, it is a bar to ſay, that the Land is Gavelkind, whereof the Plaintiff ought to be endowed of a Moiety *dum ſola. R.* 1 *Leo.* 133.

So Gavelkind Land is not forfeited by an Attainder of Felony; for the Rule is, *The Father to the Bough, the Son to the Plough. Dy.* 310. *b. St. Prær. Reg.* 17 *Ed.* 2. 16.

Yet the Cuſtom does not prevail, if the Father be outlawed or abjured; for it ſhall be taken ſtrictly. *Dy.* 310. *b. in Marg.*

But theſe Cuſtoms are collateral, and therefore not loſt if the Land is diſgavelled. *Semb.* 1 *Sid.* 77. *Cro. Car.* 562. *R.* 1 *Sid.* 137. *Ray.* 76. 1 *Lev.* 79. *Hard.* 325.

If Land be of the Nature of Gavelkind, it is ſufficient only to mention in Pleading, that it is Gavelkind, without a Preſcription for it. *Co. L.* 175. *b.* *Cro. Car.* 562. 1 *Sid.* 77, 138.

But it ought to be mentioned in Pleading, that it is Gavelkind; otherwiſe it ſhall not be intended, tho' the Land lies in *Kent*. *Co. L.* 175. *b.* *R. Lut.* 754.

So, in a ſpecial Verdict. *Lut.* 754.

So, in collateral Cuſtoms, which belong to Gavelkind Land, in Pleading, a Preſcription muſt be made for them: As, to deviſe, to have a Moiety *dum caſta, &c.* for Dower, *&c.* *Semb. Cro. Car.* 562. 1 *Sid.* 77. *Ray.* 76. *R.* 1 *Sid.* 148. 1 *Lev.* 80.

So Land of the Nature of Gavelkind has Fealty incident: And therefore, every Tenant in Gavelkind ſhall do Fealty to his Lord. *Wright's Introd. to the Law of Tenures* 210.

And muſt do Suit of Court. *Wri. Int.* 210.

## GENTLEMAN.

*Vide Dignity*, (B. 9.)

## GLEBE.

*Vide Diſmes*, (B. 2.)

## GOLD AND SILVER MINES.

*Vide Grant*, (G. 7.)—*Waife*, (H. 1.)

## GOODS AND CHATTELS.

*Vide Admiralty*, (E. 9.)—*Biens, per Totum.*—*Chancery*, (4 W. 5.)—*Treſpaſs*, (A. 1.—B. 4.)

## GRAND CAPE.

*Vide Proceſs*, (D. 4.)

## GRAND SERJEANTY.

*Vide Homage*, (F.)

# GRANT.

AS to the Premiſſes in a Grant, *Vide* in *Fait*, (E. 3, 4.)
As to the *Habendum*, *Vide* in *Fait*, (E. 9, 10.)
As to an Exception, or Indorſement, *Vide* in *Fait*, (E. 2, 5, &c.)
As to the Expoſition of the Covenants, or Words of a Grant, *Vide* in *Covenant*, (D. 1, 2).—*Deviſe*, (N. 1, &c.)—*Parols*, (A. 18, &c.)

## (A) Who may be a Grantor.

TO every Grant there muſt be a Grantor, Grantee, and Thing to be granted. *Dy.* 49. *a.* *Perk.* 1.
A Grantor is the King, or a Subject; a Perſon Natural, or Politick.
Every Common Perſon being *ſui juris*, *indigena*, of ſane Memory, and full Age, has Capacity to make a Grant. *Vide Capacity*, (C.—D. 1, &c.)
If an Act of Parliament enables the City of *London* to diſpoſe of an Office, it may make a Grant of it. *Hard.* 48.
So the King, as well as a Common Perſon, may make a Grant. *Vide Poſt*, (G. 1, &c.)
But a Perſon profeſſed in Religion, attainted, or *Covert-Baron*, Alien, *Non Compos*, or Infant, cannot make a Grant, except in Special Caſes. *Vide Capacity*, (D. 1, &c.)

### (A. 2.) By what Name.

The Grantor and Grantee, regularly, ought to be named by the Chriſtian, and Surname. *Vide Capacity*, (B. 4, 5.)—*Deviſe*, (I.—K.)—*Fait*, (E. 3.)
Or, by the Name of Confirmation.
But it is enough, if there be a ſufficient Deſcription of the Grantor or Grantee, whereby he may be known: As, by his Name of Dignity, or Office. *Vide Capacity*, (B. 4, 5.)
Tho' his Addition be omitted, or miſtaken. *Vide Fait*, (E. 3.)
Tho' the Addition be not true.
Yet the Perſon deſcribed ought then to be *in Rerum naturâ*. *Vide Poſt*, (B. 1.)—*Capacity*, (B. 4, 5.)
And a Miſtake of the Chriſtian Name ſhall not be ſupplied. *Vide Fait*, (E. 3.)

### (A. 3.) When the Grant ſhall be void.

A Grant by a Perſon profeſſed in Religion, who is *civiliter mortuus*, will be void.
So, a Grant or Contract by a *Feme Covert*, without the Aſſent of her Huſband. *Vide Baron and Feme*, (Q.)
So, a Grant, or Contract by an Infant, which does not take Effect by the Delivery from his Hand. *Vide Enfant*, (C. 2.)
*Vide Poſt*, (E. 14.)

## (B. 1.) Who may be a Grantee.

SO every Perſon *in Eſſe* at the Time, and not profeſſed in Religion, may take by Grant. *Vide Capacity*, (A. 1. 2.— B. 1, &c.)

Tho' it be a *Feme Covert*, or Infant. *Vide Baron and Feme*, (P. 2.)— *Enfant*, (B. 1.)

Tho' he be an Alien, Perſon attainted for Treaſon or Felony, or Clerk convict. *Perk. Grant* 48. *Vide Alien*, (C. 2.)

Tho' he be Villein to the King, or a Common Perſon. *Perk. Grant* 48.

A Perſon outlawed, or in Priſon. *Perk. Grant* 48.

Baſtard, Excommunicated, or *Non Compos*. *Perk. Grant* 48, 51.

But a Perſon not *in Eſſe* at the Time of the Grant, cannot be a Grantee: As, if a Grant be to the right Heirs of *B.* who is then alive. *Perk. Grant* 52.

Yet a Grant to a Perſon uncertain may be good, if it be aſcertained in the Life of the Grantor: As, a Grant to him who ſhall come firſt to *St. Paul*'s the next Day, if the Grantor does not die before any one comes there; for if any one capable come there, he ſhall take. *Perk. Grant* 56.

### (B. 2.) When a Grantee is not neceſſary.

But the King may make a Grant by way of Ordinance, without naming any Grantee: As, he may appoint, that ſuch and ſuch Men be incorporated. 2 *Rol.* 197. *l.* 30, 50.

So the King may grant a Fair, Market, Foreſt, Warren, Chaſe, *&c.* to be erected, without granting it to any one. 2 *Rol.* 197. *l.* 47.

## (C) What Things may be granted.

A preſent Eſtate, or Intereſt in Lands, Franchiſes, *&c.*

EVERY one, who has a preſent Eſtate, or Intereſt in Lands and Tenements, may grant it. *Vide Aſſignment*, (A.)

Tho' it cannot take Effect in Poſſeſſion till a future Time. *Vide Aſſignment*, (A.)

So every one may grant Things incorporeal, and not manurable, which properly lie in Grant: As, a Rent, Common, Advowſon, *&c.*

Tho' it be only a Franchiſe, or Privilege: As, the Grantee of a Fair, or Market may grant it to another. 2 *Rol.* 46. *l.* 15.

So, the Grantee of Common of Paſture. 2 *Rol.* 45. *l.* 46.

So, the Grantee of Common *ſans nombre* in Fee. 2 *Rol.* 46. *l.* 1, 3. 2 *Rol.* 73.

The Grantee of a Warren in Fee. 2 *Rol.* 46. *l.* 12.

Tho' the Intereſt be accompanied with a Truſt: As, Guardian in *Chivalry*, or Socage, may grant his Guardianſhip. 2 *Rol.* 46. *H.*

So, the Grantee of a Corrody certain. 2 *Rol.* 45. *l.* 49.

The Grantee of the next Avoidance. 2 *Rol.* 45. *l.* 35.

So the Grantee of an Annuity, *pro Conſilio impenſo & impendendo*, made to him and his Aſſigns, may grant it to another. *R.* 7 *Co.* 28. *b.*

So, if the Eſtate or Intereſt in the Thing granted be certain, the Grant will be good, tho' the Thing itſelf is contingent and uncertain: As, if the Leſſor grant to the Leſſee all the Emblements, which he ſhall have at the

End of his Term, it will be good; for he has an Intereſt in all that will be, tho' it be uncertain whether any will be. *R.* 2 *Rol.* 48. *l.* 5. *Hob.* 132.

Or, all Fruits which grow annually upon ſuch Land. 2 *Rol.* 48. *l.* 10. *Hob.* 132.

So, if a Parſon grant all the Tithes of Wool which ſhall ariſe in ſuch a Year, tho' perhaps none will ariſe. 2 *Rol.* 48. *l.* 20. *Hob.* 132.

So a Grant, that if a Tenant die, his Heir within Age, he ſhall not be in Ward. 3 *Leo.* 154.

That there ſhall be a Diſcharge for his Houſe, when the Clergy grant Tithes to the King. 3 *Leo.* 154.

Or, that he ſhall not be Collector. 3 *Leo.* 154.

## (D) What cannot be granted.

### A *Choſe en Action*, Right, Poſſibility, &c.

BUT a Grant of a *Choſe en Action*, bare Right, or Poſſibility will be void. *Vide Aſſignment*, (C. 1, 2, 3.)

So a perſonal Privilege cannot be granted over to another: As, if a Man lend his Horſe to another to ride to *Y.* he cannot lend him to another. 2 *Rol.* 46. *l.* 7.

If a Way be granted to *A.* for his Life, he cannot grant it to another. 2 *Rol.* 46. *l.* 10.

So a Thing uncertain cannot be granted: As, if *A.* has a Corrody uncertain, he cannot grant it to another. 2 *Rol.* 45. *l.* 48, 50.

If he has a Common *ſans nombre* for Life or Years. 2 *Rol.* 46. *l.* 3. 2 *Rol.* 73.

Or *Eſtovers* uncertain. 2 *Rol.* 46. *l.* 5.

If *A.* holds 3 Acres by Fealty and Rent, and the Lord grant the Services of one of the Acres, it is void. *Perk. Grant* 67.

Or 3 Joint-tenants hold, &c. and the Lord grant the Services of one of them. *Perk. Grant* 68.

So a Man cannot grant a Thing which he has not, tho' he afterwards poſſeſs it: As, if he grant a Rent out of Land, and afterwards purchaſe the ſame Land, the Grant is void. *Perk. Grant* 65.

So a Grant of the Wool of all the Sheep that he ever ſhall have, is void. 2 *Rol.* 48. *l.* 22. *Hob.* 132.

If there be a Leſſee of Sheep for 2 Years, the Leſſor cannot grant them during the Term. 1 *Leo.* 43.

So, if the Leſſee covenant to leave ſo many Sheep at the End of his Term, the Leſſor cannot grant them before the Term ends; for there is no Property in him. *R.* 1 *Leo.* 42.

But a Grant by Fine executory will be good, if he afterwards purchaſe, tho' he had it not at the Time of the Grant: As, if he grant a Reverſion by Fine, and afterwards purchaſe it, the Grantee after the Death of the Tenant for Life may execute it by *Scire facias*. *Perk. Grant* 66.

## (E) By what Names Things ſhall paſs in Grants.

### (E. 1.) What paſſes by a Grant of an Hereditament.

*HEREDITAMENT* is a very extenſive Word, whereby every Thing paſſes which may be inherited, Corporeal, or Incorporeal, Real, Perſonal, or Mixt. *Co. L.* 6. *a.* *Vide Fait*, (E. 4.)—*Deviſe*, (N. 2, 3.)

As, a Rent, Common, Piſcary, *&c.* in Groſs. 2 *Rol.* 186. *l.* 5.

An Advowſon, Rectory, Parſonage, *&c.* *R. Dy.* 351. *a.*

### (E. 2.) Tenement.

*Tenement* is an extenſive Word, whereby all Lands and Inheritances, which may be held, paſs. *Co. L.* 6. *a.* 1 *Leo.* 188.

And alſo Offices, Commons, Rents, Profits *àprendre* out of Land, and every Thing whereof a Man may be ſeiſed *ut de libero tenemento*. *Co. L.* 6. *a.*

And therefore, by a Grant of all his Lands and Tenements, a Reverſion paſſes. 2 *Rol.* 57. *l.* 10.

So, a Common, tho' it be in Groſs. *Dub.* 2 *Rol.* 57. *l.* 5, 7.

A Rent-Charge. *R.* 2 *Rol.* 57. *l.* 15.

But a Common, Way, *&c.* not appendant or appurtenant to Tenements do not paſs. *Semb.* 2 *Rol.* 57. *l.* 7. 12.

### (E. 3.) Land.

*Terra eſt Nomen generaliſſimum*, and comprehends all Species of Land, as Meadow, Paſture, Wood, Moor, Water, Marſh, Furze, and Heath, *&c.* *Co. L.* 4. *a.* *R.* 1 *Rol.* 19.

And it includes Caſtles, Houſes, and other Buildings erected upon the Land. *Co. L.* 4. *a.* 2 *Rol.* 265.

And therefore, if a Man grant all his Lands in *D.* his Houſes there paſs. 2 *Rol.* 57. *l.* 17.

So, if he has an Houſe in *A.* and Houſes and Lands in *B.* and deviſes his Houſe in *A.* to one and (having demiſed the Houſes and Lands to *D.* rendring Rent) all thoſe his Lands, Meadow, and Paſture in *B.* to another, his Houſes there paſs by the Word, *Lands*, tho' he mentions his Houſe in *A.* expreſly. *R.* 2 *Rol.* 57. *l.* 20.

If a Man lett his Land, open Mines in it paſs. 2 *Lev.* 185.

If he lett the Mines in his Land, and there are any open Mines, they paſs, but not Mines which are not open. *R.* 2 *Lev.* 185.

If he lett the Land with all the Mines in it, and none are open, he may open new Mines. 2 *Lev.* 185.

So, if a Man grant his Lands, all Profits within the Bowels of the Land paſs: As, Mines of Tin, Lead, Iron, Coal, *&c.* *Co. L.* 4. *a.* 14 *H.* 8. 1.

So, all Profits upon the Land; for *cujus eſt Solum, ejus eſt uſque ad Cælum.* *Co. L.* 4. *a.*

And therefore, Water upon the Land, and Fiſh and a Piſcary in it, paſs. *Co. L.* 4. *a.*

So, if a Man demiſe the Herbage of his Woods, tho' the Soil does not paſs thereby, yet if he afterwards grant all his Land in the Tenure or Occupation of the Leſſee, the Wood paſſes. *Co. L.* 4. *b.*

## (E 4.) By the Grant of a Seigniory, or General Words.

As to the Grant of a Seigniory, *Vide Seigniory.*

By the Grant of an Honour, divers Manors, Lands, *&c.* may paſs. *Co. L.* 5. *a. Vide Honour.*

So, by the Grant of an Iſle. *Co. L.* 5. *a.*

Or, a Town. *Co. L.* 5. *a.*

Or, a Caſtle. *Co. L.* 5. *a.*

Or, a Knight's Fee. *Co. L.* 5. *a.* 2 *Rol.* 1. *l.* 32.

By the Grant of a Manor, a Caſtle, Lands, Liberties, *&c.* may paſs. *Co. L.* 5. *a. Vide Copyhold,* (Q. 1, &c.)

So, a reputed Manor. *R.* 2 *Rol.* 45. *E. Sav.* 113.

So, by the Grant of a Farm, Houſes, Lands, and Tenements may paſs. *Co. L.* 5. *a.*

So, by a Grant *de Virgatâ, Carucatâ, Bovatâ terræ, &c. Co. L.* 5. *a.*

By the Grant of a Grange, not only the Houſe for ſtoring of Corn, *&c.* but Barns, Stables, Sties, *&c.* neceſſary for Beaſts, Huſbandry, *&c.* and the Curtilage, and Cloſe where they are ſituated, paſs. *Co. L.* 5. *a.*

## (E. 5.) By what Words the Soil paſſes.

So, if a Man grant *Prata ſua,* the Land itſelf paſſes. *Co. L.* 4. *b.*

Or, *Paſturas ſuas. Co. L.* 4. *b.*

Or, *Brueras ſuas,* the Soil, where Heath grows, paſſes. *Co. L.* 4. *b.*

So, by a Grant of *Joncarias ſuas,* the Soil, where Ruſhes grow. *Co. L.* 5. *a.*

By a Grant of *Ruſcarias ſuas,* the Soil, where Broom grows. *Co. L.* 5. *a.*

By the Grant of a Marſh, *Mora, Jampna, &c.* the Soil of that Nature paſſes. *Co. L.* 5. *a.*

By the Grant of a Manor for three Crops and all Profits, the Manor paſſes. 2 *Rol.* 57. *l.* 40.

By the Grant of a Park the Soil paſſes: for he cannot have it *in alieno Solo.* 2 *Rol.* 60. *l.* 3.

So, if a Man grant *omnes boſcos ſuos,* the Land as well as the Wood paſſes. *Co. L.* 4. *b.*

Tho' he ſays, *omnes boſcos creſcentes. Co. L.* 4. *b. R.* 5 *Co.* 11. *a. Cro. El.* 522. 2 *Rol.* 455. *l.* 15.

Wood, Underwood, Coppices, and Hedge-rows. *R.* 2 *Cro.* 487. 2 *Rol.* 455. *l.* 20.

So, by the Grant of a Foreſt, Chaſe, Vivary, or Warren in his own Land, the Soil, as well as the Privilege there, paſſes. *Co. L.* 5. *b. Vide Chaſe.*

So, if he grant the Profits of his Land, the Land itſelf paſſes. *Co. L.* 4. *b.*

So, if he grant a Boilery of Salt, the Land paſſes; for that is the whole Profit. *Co. L.* 4. *b.*

Or a Mine of Lead, *&c. Co. L.* 6. *a. Vide Waife.*

If he grant *Firmam* of his Tenants at Will *Manerii ſui de B.* the Lands of the Tenants paſs. *Per Clerks in Dutchy, Welſh cont.* 3 *Leo.* 12.

By a Grant of the Herbage or Veſture of his Land, the Soil does not paſs; for tho' he may have Treſpaſs *quare clauſum fregit,* yet he ſhall have only the Corn, Graſs, *&c.* and not Houſes, Trees, Mines, *&c.* which are fixt to the Soil. *Co. L.* 4. *b. Dal.* 47.

So, by the Grant of a Liberty to dig Turf, the Soil does not paſs. *Co. L.* 4. *b.*

By the Grant of a Piſcary, the Soil, or Water does not paſs. *Co. L.* 4. *b.*

By

By a Grant of Water, the Soil does not paſs. *Co. L.* 4. *b.*

Nor, if a Man grant *paſcua ſua*; for the Paſturage only paſſes. *Semb. Co. L.* 4. *b.*

If he grant *viginti acras Saliceti, Fraxineti, Lupuliceti, &c.* the Wood growing only paſſes. *Semb. Co. L.* 4. *b.*

If a Man lett his Warren, the Soil does not paſs. 2 *Rol.* 59. *l.* 55. 60. *l.* 7.

So a Grant of all ſaleable Woods growing, does not paſs the Soil. *R.* 2 *Cro.* 524.

Or, all the great Wood, *viz.* Oaks, Aſhes, *&c.* for the *viz.* explains what Wood is intended. 2 *Rol.* 455. *l.* 10.

Or, all Timber Trees; for nothing paſſes except the Trees, and ſo much of the Soil as is requiſite for their growing. 2 *Cro.* 487. 2 *Rol.* 455. *l.* 20.

## (E. 6.) What paſſes by the Grant of a Meſſuage.

So, by the Grant of a Meſſuage, or Houſe, the Garden, Orchard, and Curtilage paſs. *Co. L.* 5. *b.* *R. Cro. El.* 89.

And an Acre of Land or more may paſs by the Name of an Houſe. *Co. L.* 5. *b.*

So, by the Name of a Meſſuage, a Church is comprized. *Semb.* 1 *Sal.* 256.

By the Grant of a Meſſuage *prout includitur aquis*, the Soil of the Moats paſs. 2 *Rol.* 50. *l.* 25.

But by the Deviſe of an Houſe (and not called Meſſuage) without ſaying, *cum pertinentiis*, the Garden and Curtilage do not paſs. 2 *Ca. Ch.* 27. *Vide Cro. El.* 89.

## (E. 7.) By the Grant of a Curtilage.

So, by the Grant of a Curtilage, the Houſe paſſes. 2 *Rol.* 1. *l.* 30.

## (E. 8.) By a Grant of Pannage.

So, by the Grant of Pannage, the Maſt of the Trees paſſes, not the Trees themſelves. *Per* 2 *J. Dal.* 47.

## (E. 9.) By a Grant *Cum Pertinentiis*.

So, by the Grant of a Meſſuage *cum pertinentiis*, the Orchard, Garden, Yards, and Curtilage paſs. 2 *Cro.* 526.

So every Thing appendant or appurtenant, as, Common, Turbary, *Eſtovers, &c.* paſſes by a Grant of the Land to which, *&c. cum pertinentiis.* *R.* 3 *Lev.* 165.

So, by the Grant of a Meſſuage *cum terris pertinentiis*, Land occupied continually with the Houſe paſſes, tho' Land is not properly appurtenant to an Houſe. *R. Pl. Com.* 170.

So, by the Demiſe of an Houſe *cum pertinentiis*, a Shop annexed to it for 30 Years and reputed Parcel, paſſes. *Semb. Cro. Car.* 17.

Tho' it be a Demiſe, or a Grant of the King. *R. Cro. Car.* 169.

So, by a Deviſe of Land in *N. with all Lands belonging*, 2 Acres 4 Miles diſtant, continually enjoyed with it, paſs. *Adm. Cro. Car.* 57. *Vide infra.*

By the Deviſe of a Tenement *cum pertinentiis* in which *N.* inhabited in *A.* Lands always uſed with it paſs, tho' out of *A.* *R. Cro. El.* 113.

So,

So, by the Deviſe of an Houſe *cum pertinentiis*, the Land paſſes, when the Inſtruction was, to deviſe all the Lands as well as the Houſe. *R. Cro. El.* 114.

So, if the Land was uſed with it. *R. Cro. El.* 704.

By the Grant of a Manor *cum pertinentiis*, every Thing reputed Parcel of the Manor paſſes. *R.* 6 *Co.* 39. *R.* 1 *Sid.* 190.

By the Grant of a Meſſuage *cum pertinentiis*, a Conduit with Water Pipes to it, enjoyed any Time, paſſes. *R.* 2 *Cro.* 121. *Mo.* 682.

Tho' erected by a Leſſee, and the Leſſor occupies them together. *R.* 2 *Cro.* 122.

So, if he grants the Land, (excepting the Houſe,) the Conduits are excepted. 2 *Cro.* 121.

By the Grant of a Chapel *cum pertinentiis*, Tithes appendant paſs. 2 *Rol.* 151.

But by the Grant of an Houſe, or Land, *cum pertinentiis*, another Houſe, or Land does not paſs, unleſs it be found to be Parcel. *R.* 1 *Lev.* 131.

As, by the Grant of a Mill *cum pertinentiis*, the Cloſe where the Mill is, or the Kiln there does not paſs, without more. *R.* 1 *Sid.* 211. 1 *Lev.* 131.

So, by the Grant of a Meſſuage *cum pertinentiis*, a Shop annexed to it for 30 Years does not paſs, unleſs it be found to be Parcel. *R. Cro. Car.* 17.

By a Deviſe of Land in *N. cum pertinentiis*, 2 Acres 4 Miles diſtant enjoyed with it, do not paſs. *R. Cro. Car.* 57. *Hutt.* 85. *Vide ſupra.*

Nor, by a Deviſe of a Copyhold Meſſuage *cum pertinentiis*, can Freehold Land paſs with it, tho' uſed with it. *R. Cro. El.* 704.

So, by the Surrender of a Copyhold Meſſuage *cum pertinentiis*, Copyhold Lands appurtenant do not paſs. *R.* 2 *Cro.* 526.

So, by the Grant of an Houſe *cum pertinentiis*, a Conduit erected by a Leſſee, Diſſeiſor, *&c.* and never enjoyed with the Houſe by the Leſſor, Diſſeiſee, *&c.* does not paſs. 2 *Cro.* 122.

So, by the Grant of a Manor *cum pertinentiis*, a Foreſt, Parcel of the Manor, does not paſs.

## (E. 10.) What paſſes as Parcel, *&c.*

In the Grant of a Common Perſon of all Lands, *&c. antehac cognit' accept'* or reputed as Parcel, *&c.* Land, Wood, *&c.* which was Parcel *quocunque tempore præterito*, will be included. *Dy.* 362. 2 *Rol.* 186. *l.* 20. *Co. Ent.* 384. *R.* 2 *Mod.* 69.

If they were enjoyed together for a convenient Time. *Mo.* 190.

If they were purchaſed and uſed together and reputed Parcel only for 2 Years; for a ſmall Time is ſufficient to make a Reputation. *R. Cro. Car.* 308.

So, in a Grant of the King, if they were uſed and demiſed together for a convenient Time. *R. Cro. Car.* 169.

If by Rentals, Records, *&c.* it be reputed Parcel, tho' in Truth it be not. *R. Sav.* 26.

So, if there be a Fine or Recovery of a Manor *cum pertinentiis*, Lands reputed Parcel for 80 Years paſs. *R.* 1 *Lev.* 27.

But a Grant of the King with all Lands, Woods, *&c. antehac Parcell'* extends only to Things Parcel in convenient Time, as within 17 or 20 Years, according to the Nature of the Thing. *Semb. Co. Ent.* 384.

So, if a Manor be granted, and all Woods, Parcel *&c.* and the Manor does not paſs for Default for Livery, *&c.* the Wood does not paſs. *Sav.* 63.

So, if one convey a Rectory and all Tithes, *&c.* to the Rectory belonging, if the Rectory does not paſs for Defect of Livery, *&c.* the Tithes tho' they lie in Grant, do not paſs. *Sav.* 63.

## (E. 11.) What, as Incident.

So, by a Grant of any Thing, another Thing which is Incident paſſes: As, if the Lord grant the Homage of his Tenant, who holds by Homage and Fealty, the Fealty paſſes as Incident. *Perk. Grant* 112.

Or, if he holds by Fealty and Rent, and the Lord grant the Rent. *Perk. Grant* 113. *Co. L.* 151. *a.*

So, if he holds as of the Honour of his Caſtle by Caſtle-guard; if the Lord grant the Caſtle, the Service paſſes as Incident 2 *Rol.* 59. *l.* 25.

So, if a Man grant the Reverſion, the Rent paſſes as Incident. *Perk. Grant* 113.

If there be a Grant of Land *cum pertinentiis*, a Common, *&c.* paſſes as Incident. 1 *H.* 4. 5. *a.*

Tho' it be in the King's Grant. 1 *H.* 4. 5. *a.*

So, by the Grant of a Parſonage, the Patronage of the Vicarage paſſes as Incident. 2 *Rol.* 50. *l.* 32.

So, a Corody as Incident to a Patronage. 2 *Rol.* 59. *l.* 52. 1 *H.* 4. 5. *a.*

So a Thing appendant or appurtenant paſſes by a Grant of the Thing to which, *&c.* as Incident, without ſaying, *cum pertinentiis*. *Co. L.* 307. *a. Cont. Cro. El.* 18.

So, if a Rent be granted with a *Nomine Pœnæ*, by a Deviſe of the Rent, the *Nomine Pœnæ* paſſes. *Per* 2 *J. Cro. El.* 895.

So, by the Grant of an Houſe, the Curtilage paſſes. *R. Cro. El.* 89. *Vide Ante*, (E. 6.)

So, by the Grant of any Thing, *conceditur et id ſine quo res ipſa haberi non debet*: As, if one grant his Trees, the Grantee may enter upon his Land, for the cutting down and carrying them away. *Pl. Com.* 16. *a.*

But if the Incident be ſeparable, it does not paſs by a Grant of the Thing to which it is Incident, if it be excepted: As, if the Lord grant a Rent, except or ſaving the Fealty, the Fealty does not paſs. *Co. L.* 151. *a. Perk. Grant* 113.

So, if a Man grant a Reverſion ſaving the Rent. *Perk. Grant* 113.

So, by the Grant of any Thing, a Liberty which was convenient ſhall not be granted as Incident, unleſs it be of Neceſſity: As, if *A.* grant his Fiſh in ſuch a Water, the Grantee cannot dig a Trench for letting out the Water; for he may take them by a Net. *Pl. Com.* 16. *a.*

So, if he grant his Land and all his Trees, Mines open, and not open in it; tho' he may open Mines, he cannot cut down Trees for the working and Uſe of the Mines. *R. Hob.* 234.

Tho' the Mines were open, and the Leſſor uſed the Trees for them. *Hob.* 234.

## (E. 12.) The Extent of a Grant.

A Grant ſhall be extended to every Thing comprized within the Words, tho' they are not regularly deſcribed in the Deed: As, if *A.* grant his Manor of *D. in Com' N.* and all his Land in *England*, Parcel of the ſame Manor; all Lands Parcel of the Manor paſs, tho' they do not lie in the County of *N.* *R.* 1 *Rol.* 407.

If one demiſe a Garden Plot to *A.* and afterwards to *B.*, who builds an Houſe upon Part, and afterwards the Leſſor grants *totam illam Peciam fundi ſive* Garden Plot *nuper in tenurâ A. & nunc in tenurâ B.* the Reverſion of the Houſe as well as the Garden paſſes. *R.* 2 *Rol.* 261, 265, 267.

But if a Man bargain all his Wood and Underwood upon such Land being, to have for the Life of *B.* rendring 10*l. per Ann.* if the Grantee cut down the whole Wood at once, he shall not cut it down afterwards, tho' it be granted for the Life of *B.* under an annual Rent. *R.* 3 *Leo.* 7. *Mo.* 15.

### (E. 13.) When confined to *the Tenure, &c. of such an one.*

If a Man grant a Tenement *vocat' D. in tenurâ sive Occupatione B.* All Lands of that Name, tho' Part of them are demised to him, and Part enjoyed by him without Lease, pass; for both are in his Occupation. *R.* 1 *Rol.* 19.

Tho' Part be Wood inclosed adjoining to the Land demised, but, by Reason of Fences being thrown down, the Beasts of *B.* have the Herbage of the Wood; for if he has the Occupation by Right or by Wrong, it is sufficient. *R.* 1 *Rol.* 19, 20.

If a Man grant Land, by Name, in the Tenure of *A.* and lately demised to *B.* in the Parish of *D.* Land so named in the Tenure of *A.* passes, tho' never demised to *B.* nor in the Parish of *D.* *Semb.* 3 *Leo.* 162.

If he grant all Tithes, which belong to the Rectory of *B. all which were in the Tenure of D.* Tithes belonging to the Rectory pass, tho' never in the Tenure of *D.* for there was a plain and certain Description of them before. *R. Jon.* 437.

But by a Grant of the Manor of *B.* and all Lands *in tenurâ A.* lately demised to *C.* in the Parish of *D.* Land *in tenurâ A.* if never demised to *C.* nor in the Parish of *D.* does not pass. *R.* 3 *Leo.* 162. 1 *And.* 148.

If a Man declare the Uses of a Fine or Recovery of Lands in *E.* and *F.* as to all that Farm and the Lands belonging called *Vines* in *E*; and 21 Acres of the same Farm lie in *F.* those do not pass; for without the last Words, which are restrictive, the Sense is not compleat. *Per Atkins, Hard.* 225.

### (E. 14.) When a Grant shall be void.

(E. 14.) If it be uncertain. *Vide Ante,* (A. 3.)

A Grant shall be void, if it be totally uncertain: As, if a Man grant as many Trees as can be spared in his Manor. *Bridg.* 12.

If he grant 10 *l. per Ann.* Parcel of his Manor, without other Certainty. *Bridg.* 12.

## (F) A Grantor cannot defeat his own Grant.

A Grantor cannot defeat his own Grant: And therefore, if a Man grant 20 of his best Trees to be taken in 10 Years, the Grantor cannot cut down Trees there without the Consent of the Grantee. *R.* 2 *Lev.* 142.

## (G) Grant by the King.

For what the King may give or by pard, see the King v. Montag. Lord Chr. Nottingham's MSS. Rep. cd. No. 82. & 92.

### (G. 1.) What Things he may grant.

HOW a Grant by the King shall be made, by Writ or Patent, and under what Seal, *Vide* in *Patent,* (A.—B.—C. 1, &c.)

The King, as well as a Common Person, may make a Grant of all Lands, and Tenements, or other Inheritances, which are vested in him at the Time of the Grant. 2 *Rol.* 198. *l.* 15.

As, he may grant Lands, which come to him by Deſcent, or Eſcheat, before Office found; for the Freehold is caſt upon him by Law. *Vide* in *Prærogative*, (D. 66, &c.)

So, Lands, which come in Remainder, or Reverſion, after a particular Eſtate determined.

Or, if the particular Eſtate be determined by a Condition broken, tho' the Breach does not appear upon Record. 2 *Rol.* 184. *l.* 10, 15. *Vide Prærogative*, (D. 70.)

So, if an Office be forfeited for being in Arrear in an Account, or other Neglect of a Thing required by the Patent upon Pain of Forfeiture, where it appears by the Record, that the Party is in Arrear, *&c.* the King may grant the Office to another, without a *Scire facias* againſt the Patentee, or Office, or other Matter of Record, which finds the Forfeiture. *Dy.* 211. 2 *Rol.* 184. *l.* 25.

So, if Lands forfeited for Treaſon are veſted in the King by the *St.* 33 *H.* 8. or any particular Statute, the King may grant them before Office found, notwithſtanding the *St.* 18 *H.* 6. 6. 2 *Rol.* 184. *l.* 40.

So the King may grant a Condition, Right, Poſſibility, or *Choſe en Action*. *Vide* in *Aſſignment*, (D.)

A Ward, *&c. cum acciderit.* 2 *Rol.* 198. *l.* 23.

All Wards, Marriages, *&c.* to ſuch a Value until ſuch a Time. 2 *Rol.* 198. *l.* 21.

So a Power of aſſenting to an Election of a Biſhop, Abbot, *&c.* 2 *Rol.* 187. *l.* 22, 25.

What Juriſdictions, Franchiſes, Exemptions, Offices, Impoſitions, *&c.* the King may grant. *Vide* in *Prærogative*, (D. 28, &c.)

## (G. 2.) What not.

But the King cannot grant a Thing intruſted to him in reſpect of his Sovereignty: As, the Lapſe of a Church, before or after it becomes void. 2 *Rol.* 187. *l.* 32, 35. *Vide Eſgliſe*, (H. 11.)

Nor, Purveyance, Butlerage, Priſage, *&c.* 2 *Rol.* 187. *l.* 35. *Vide Prærogative*, (D. 41, 42, 45.)

Nor, the Power to make a Diſpenſation of a Statute. 7 *Co.* 36. *b.*

So he cannot grant the Lands, or Goods of a Recuſant convict, before the Commiſſion returned. 2 *Rol.* 184. *l.* 20.

Nor, the Lands or Goods of one attainted of Treaſon, before his Attainder. *Per* 6 *J.* 5 *cont. Dy.* 108. *a.*

Tho' the Treaſon was committed at the Time of the Grant, and the Forfeiture has Relation to the Offence. *Q. Dy.* 108.

So the King cannot grant the Proſecution, or Execution of any penal Statute to another; for it is intruſted with him as the Head of the Weal-Publick. *R.* 7 *Co.* 37. *a.*

Nor, the Penalty or Benefit of a Penal Statute, before it be recovered. 7 *Co.* 36. *b.* 37. *a.*

Nor, any Fine or Forfeiture of a Particular Perſon, before he be convicted. *Decl.d by the St.* 1 *W. & M.* 2. that ſuch Grant or Promiſe is illegal and void.

## (G. 3.) When it binds his Succeſſor.

If the King grant Lands or Tenements, of which he has the Fee, the Grant binds his Succeſſor.

So,

So, if he grant a Wine-Licence; for he has an Inheritance in it, and the Intereſt paſſes, and not the Authority. *R.* 1 *Sid.* 6.

So in all Caſes, where the King grants an Intereſt. *Adm. Hard.* 443.

As, if he grant to an Alien, for him and his Succeſſors, to be free from Alien Cuſtoms. *Hard.* 444.

To his Tenant, that his Heir ſhall not be in Ward; for he has an Inheritance in the Seigniory. *Hard.* 444.

Or, that he may alien in *Mortmain*. *Hard.* 444.

So, if the King grant to a College to be diſcharged of Toll, without ſaying, *for him and his Succeſſors*; it ſhall be diſcharged in the Time of the Succeſſor, as well as where an Intereſt paſſes. *R. Yel.* 15.

But a Grant by the King during his Will, determines by his Death. *Mo.* 176.

So a Grant of a meer Licence, or Authority. *Hard.* 443.

## (G. 4.) What Grant ſhall be good.

(G. 4.) In reſpect of the Eſtate of the King, or the mentioning of it.

Every Grant of the King of a Thing, which he may grant, where he is appriſed of his Intereſt, and of the Cauſe and Circumſtances of the Grant, will be good.

Though every Thing is not performed which ſeemed deſigned, if the Words of the Conſideration are anſwered; for no Inference ſhall be made beyond the Words: As, if the King grant, in Conſideration of the Surrender of a Patent by *A.* and his Wife, where the Wife cannot ſurrender; for Mention is made only of the Surrender of the Patent, and not the Eſtate. *R.* 1 *Co.* 43. *a.*

Or, in Conſideration of the Surrender of a former Patent to be cancelled; if it be delivered into *Chancery*, tho' it be not cancelled. *R.* 10 *Co.* 67. *b.* 2 *Rol.* 199. *l.* 35.

In Conſideration, that the Leſſee for Years being then in Poſſeſſion ſurrender, the King grants a new Leaſe, it is ſufficient; for the Acceptance of the new Leaſe is a Surrender, and the King takes Notice that he was then poſſeſſed. 10 *Co.* 67. 2 *Rol.* 199. *l.* 40.

Though the King does not recite his own Eſtate; for he need not do ſo. 1 *Co.* 45. *b.* 51. *a.* *Mo.* 318, 320.

So, if he recite falſly, that he has an Eſtate in Poſſeſſion by the Surrender of a Grant in Tail, and grants the Manor to *B.* he ſhall have the Reverſion, tho' he cannot take the Poſſeſſion. *R.* 6 *Co.* 55. 8 *Co.* 56. *a.*

So, if he recites a Grant in Tail, and afterwards grants *Manerii Revertionem, necnon Manerium prædictum*, the Grant is not void for Uncertainty; but if the Tail be *in Eſſe* the Reverſion paſſes, otherwiſe the Poſſeſſion. *R.* 8 *Co.* 167.

So, if the King licenſe his Tenant to alien in *Mortmain*, he need not mention how he holds. 41 *Aſſ.* 19.

Though the King does not mention, when the Grant ſhall commence: As, if the King recite a Grant of Pannage, &c. to *A.* for Life, and then grant it to *B.* without ſaying, *poſt mortem*, &c. it will be good; for he ſhall take when he can by Law. *R.* 8 *Co.* 56. *a.* 2 *Brownl.* 232, 234.

So, if the King grant an Office, *Habendum* from the full Age of *B.* which was then paſſed, it will be good for the future Time. *R.* 9 *Co.* 47. *b.*

So, if the King grant an Advowſon to *A.* and the Heirs Male of his Body, who regrants it to the King in Fee, and the King afterwards grants it to *B.* and his Heirs; the Grant to *B.* will be good, for the King is ſeiſed in Fee preſently, and the Recital of his Eſtate is not neceſſary. *R. Cro. El.* 519.

So the King's Grant will be good, tho' it does not mention what Eſtate the Grantee ſhall have; for he ſhall take at the Will of the King. *R.* 8 *Jac. ut dicitur per Hale*, 1 *Vent.* 408.

So, if the King has a conditional Eſtate in Fee, and grants in Fee, it will be good. 1 *Co.* 49. *b.*

Or has it *pur auter vie*, and grants *totum ſtatum*, or for 40 Years; for the Grant was lawful, tho' the Grantee cannot have it for 40 Years abſolutely. *R.* 7 *Co.* 12. *a.* *Mo.* 321.

(G. 5.) In reſpect of Certainty.

So a Grant of the King, which has ſufficient Certainty for ſhewing fully that the King was not deceived, will be good: As, if the King grant the Manor of *B.* without ſaying, in what County it lies: but the County muſt be alledged in Pleading. 9 *Co.* 47. *a.*

Tho' he has another Manor of the ſame Name; for it ſhall be diſtinguiſhed by the Tenure, Value, Occupant, or Particular, *&c.* 9 *Co.* 47. *a.*

So, if the King grant all his Lands, Tenements and Hereditaments in *D.* an Advowſon, Mill, Piſcary in Groſs, *&c.* paſs tho' not particularly named: but they ſhall be ſeverally demanded in a *Præcipe*. 2 *Rol.* 186. *l.* 5. 193. *l.* 15. 194. *l.* 5, 7.

If the King grant a Meſſuage and all Lands *ſpectantes aut cum eo dimiſſas*, Lands enjoyed with it for a convenient Time paſs. *R. Cro. Car.* 169.

So, if the King's Grant refers to another Thing which is certain, it is ſufficient; for *id certum eſt quod certum reddi poteſt:* As, if he grant to a City, *&c.* all Liberties which *London* has, without ſaying, what Liberties *London* has. 20 *H.* 7. 7. *b.*

Tho' the Reference be to a Matter *in Pais:* As, if the King grant an Office, Liberties, *&c.* *adeo plene ſicut aliquis alius* enjoyed them; the Grantee ſhall have all Advantages, which any former Patentee enjoyed: As, he may make a Deputy, if the former Patentee had made one. *R.* 9 *Co.* 30. *a.* 52. *a.* *R.* 10 *Co.* 64. 2 *Rol.* 185. *l.* 45.

An Advowſon appendant paſſes, tho' the *St. Prær. Reg.* ſays, that it does not paſs without expreſs Mention; for it ſhall be ſatisfied by Words æquipollent. 43 *Ed.* 3. 22. *b.* *Dy.* 350. *b.* 2 *Rol.* 185. *l.* 30. *R.* 10 *Co.* 64. *b.*

If he grant a Manor *cum tot tal' Franches' Libertat', &c. qual' A.* had; the Grantee ſhall have all Franchiſes, *&c.* which *A.* enjoyed. *Pl. Com.* 12. *b.* 2 *Rol.* 185. *l.* 5, 20. *Co. L.* 121. *b.* *Jon.* 349.

Or, *tot tal' Franches', &c. qual' A.* or any Predeceſſor had; he ſhall have all that any Tenant for Life of the Manor had, tho' *A.* had them not. *R.* 9 *Co.* 30. *a.*

If he grant a Manor with all Franchiſes, *&c.* belonging at the Time of his Purchaſe. 2 *Rol.* 184. *l.* 54.

*Cum omnibus Exitibus Amerciamentis & Proficuis Reſidentium infra M. prædictum.* *Pl. Com.* 12. *b.*

So, if the King, in Conſideration of 20 *l.* paid, grant; it is ſufficient, without ſhewing that it was paid: for it is a perſonal Thing executed, and accepted by the King. *R.* 10 *Co.* 67. *b.* 2 *Rol.* 200. *l.* 10.

Or, in Conſideration, that the Grantee ſhall repair; if the Grantee does not repair, the Grant is not void, for the King may have Covenant. 2 *Rol.* 200. *l.* 5.

So, if the King grant, in Conſideration of a Surrender; it is ſufficient, tho' the Surrender was not inrolled till after the Grant: for the Surrender was good, tho' not compleated. *Per Hob.* 221.

So, if the King be miſinformed, but not deceived, it will be good: As, if he let Land, which is recited to be 10 *l. per Ann.* when it was 20 *l.* rendring 20 *l. per Ann.* *Per Poph. Yel.* 48.

If he recite Land to be concealed, when it was not; where it appears that he intends a Grant of the Land, tho' not concealed. *Sal.* 561.

If he grant the Manor of *B. quod Manerium fuit ſeiſitum in manus noſtras, &c.* tho' it was not ſo. *R.* 10 *Co.* 113. *a.*

Or, the Office of Parker of *B. quod H. habuit*; for it was added for the more Certainty. 10 *Co.* 113. *a.*

Or the Manor of *D. quod fuit in Tenura de B.* when it was not. 10 *Co.* 113. *a.*

Or, a Manor and Advowſon, *adeo plene* as we by any Means had it, *cuidam Archiepiſcopo dudum ſpectan'*; where the Archbiſhop had the Manor, but not the Advowſon. *R.* 2 *Mod.* 1.

Or, if he grant Lands, all which are of ſuch a Value; tho' the Value be miſrecited, if there be a *Non obſtante* of the Miſrecital of the Value. *R. Hard.* 232.

## (G. 6.) What ſhall be void.

(G. 6.) If it be uncertain.

But, generally, the King's Grant will be void for Uncertainty: As, if the King grant ſuch a Toll as was taken at *B. aut alibi in Anglia*; it will be void, tho' Toll was taken at *B.* 2 *Rol.* 196. *l.* 30.

Or, all Amerciaments before his Juſtices, without ſaying, what Juſtices, of *B. R.* in *Eyre*, or Juſtices of Peace, *&c.* *Co. Ent.* 384.

Or, a Grant to *A.* to be exempt from the Office of Sheriff, without ſaying, of what County. *Co. Ent.* 384.

Or, to have *Catalla Felon'*, without ſaying, in what Manor, or County. *Co. Ent.* 384.

To have the Cuſtody of all his Houſes, without ſaying, what in particular. *R. Jon.* 293, 4.

(G. 7.) If too general.

So Words too general are not ſufficient in the King's Grant: As, if *Bona Felon', &c.* which lie in Grant, and not in Preſcription, are reunited to the Crown, or extinguiſhed, and afterwards the King grants the Manor *cum tot tal' Libertat' Privileg', &c. qual' A. nuper Abbas habuit*, who claimed the ſame Privileges by Charter; the Grantee ſhall not have *Bona Felon'* by ſuch general Words. *R.* 2 *Rol.* 193. *l.* 40. *Jon.* 349. *Vide Franchiſes*, (G. 1.)

So general Words in the King's Grant never extend to a Grant of Things, which belong to the King by Virtue of his Prerogative; for ſuch ought to be expreſly mentioned. 2 *Rol.* 195. *E.*

If the King has Land by Extent for a Debt, and grants the Land to *A.* that does not paſs the Debt, without ſpecial Words. *R.* 3 *Lev.* 135.

If he grant ſuch a Waſt, that does not paſs Royal Mines there. 1 *Co.* 46. *b.*

Or, if he grant all Mines, Gold or Silver Mines do not paſs, not being expreſly mentioned. 1 *Co.* 46. *b.*

If he grant all the Demeſnes of the Manor of *D.* Copyholds, tho' they are Part of the Manor, do not paſs. *R.* 1 *Co.* 46. *b.*

If the King ſeiſed of the Rectory of *D.* which was appropriated to an Abby, grant the Advowſon of the Church of *D.* the Rectory does not paſs, nor the Advowſon as an Advowſon in Groſs; for by the Appropriation that was extinguiſhed. *R.* 2 *Leo.* 80.

(G. 8.) If the King be deceived. By Miſinformation of his Intereſt.

So, if the King be deceived in his Grant, it will be void. 9 *H.* 6. 28. *b.* 1 *Co.* 44. *a.*

As, if the King grant a greater Eſtate than he could lawfully do: As, if the King, ſeiſed for Life, or for Years, grant in Fee; it will be void for the

the Whole, for the King was deceived. 1 *Co.* 44. *a.* *Mo.* 321. *R.* 3 *Lev.* 135.

So, if the King, ſeiſed in Tail, grant in Fee.

Or, ſeiſed in Tail, Remainder to himſelf in Fee, grant in Tail; for his Intent was to make an Eſtate Tail in Poſſeſſion, which he could not. *R. per* 7 *J.* 2 *Cont.* 1 *Co.* 49, 50. *Alt. Woods.*

So, if he grant for Life, and afterwards the Reverſion in Fee, it will be void for the Whole. 1 *Co.* 50. *b.*

So a Licence to a Tenant to alien generally, if he had only an Eſtate Tail, will be void. 21 *Aſſ.* 15. 40 *Aſſ.* 36.

So, if the King grant *Manerium de R. & M. in Com' L.* where they are ſeveral Manors. *R.* 1 *Co.* 46.

Or, *Manerium de R. cum M.* 1 *Co.* 46. *b.*

If he grant a Fair, Market, &c. on the ſame Day, on which there was an antient Fair, &c. 1 *Co.* 49. *a.*

If he grant a Rectory *cum decimis, &c. prout Abbas*; the Advowſon does not paſs, for the King intended a Grant of a Lay-fee. 2 *Rol.* 189. *l.* 15.

Or, a Manor with the Franchiſes, &c. which *A.* had; when the Liberties were reſumed from *A.* 2 *Rol.* 185. *l.* 10.

Or, Lands in *N.* and all Courts Leet, &c. *Præmiſſis ſpectan'*; where the Leet belongs to the Hundred. *R. Mo.* 427.

(G, 9.) By falſe Suggeſtion.

So, if the King's Grant be founded upon a falſe Suggeſtion, it will be void: As, if Land be recited to be only 10*l. per Ann.* when it was 20*l.* 9 *H.* 6. 28. *b.* 2 *Rol.* 188. *l.* 15. *Yel.* 48.

Or, that the King had it by Eſcheat, when he had not. 2 *Rol.* 188. *l.* 20.

So, if any Thing mentioned as the Conſideration of the Grant, or which ſounds for the Benefit of the King, (be it executed or executory, Matter of Record, or *in Pais*,) be falſe; the King is deceived, and the Grant will be void. *R.* 5 *Co.* 94. *a.* 2 *Rol.* 188. *l.* 25. 199. *l.* 30, 50. *Lane* 75, 109.

As, if the King grant, in Conſideration of the Surrender of a prior Intereſt or Eſtate; when the Surrender was only in Appearance. *Dy.* 352.

Or, the Whole was not ſurrendred. *Dy.* 352. *R.* 5 *Co.* 94. *a.* *Dub.* 2 *Rol.* 189. *l.* 35. *R. ibidem l.* 25. 45.

If he grant, in Conſideration of a Grant or Surrender by an Huſband and Wife; for the Wife could not ſurrender. *R. Hob.* 223. 2 *Rol.* 199. *l.* 45.

In Conſideration of a Surrender; when Part was leaſed to another. 2 *Rol.* 188. *l.* 25. *Per* 3 *Bar. Lane* 75, 109.

In Conſideration of an antient Rent of 5*l.* 16*s.* 8*d.*; when the Rent was 6*l.* but 3*s.* 4*d.* allowed for Payment at the *Exchequer*; for the Rent here is the Conſideration. *R. Yel.* 43, 48.

In Conſideration of a Surrender, when the Surrender was conditional. 2 *Rol.* 199. *l.* 52.

In Conſideration of the Surrender of a Leaſe; and the Leaſe was void. *R.* 5 *Co.* 94. *a.*

So, if the King grant a Rectory, if it is not in Leaſe, or if it be, after the Term, when Part was in Leaſe; it will be void: for it was intended that all ſhould paſs at the ſame Time. *R. Yel.* 43, 48. 2 *Cro.* 34, 35.

So, if the Recital of a Thing in a Patent, which ſounds to the King's Benefit be falſe; the Grant will be void, for the King is deceived. 2 *Co.* 54. 1 *Co.* 43. *a.* *Dy.* 352. *a.* 11 *Co.* 90. 2 *Rol.* 188. *l.* 12.

As, if it recite a Grant of a Reverſion which was void, and the Grant to commence after it. *R.* 11 *Co.* 4. *b.* 2 *Rol.* 188. *l.* 32.

If

If it recite an Inſtitution of his Preſentation; and he then confirms it; where the Preſentation was repealed. 2 *Rol.* 188. *l.* 45.

If the King leaſe for 21 Years after a former Leaſe to *A.* determines; which was before ſurrendred. *R.* 3 *Leo.* 5, 6.

If he grant a Manor *adeo plene* as ſuch an Abbot had it; the Adowſon appendant in the Hands of the Abbot, which was then in Groſs in the Hands of the King, does not paſs. 2 *Mod.* 2.

But a Recital which is true in Terms is ſufficient: As, if the King recite that the Eſtate was upon Condition; tho' the Condition be broken, it does not hurt: for he does not ſay that the Condition continues, and the Breach is only Matter *in Pais.* *R.* 2 *Co.* 54. *b.*

So, a falſe Recital of a Matter *in Pais* executed does not hurt: As, if the King recite, that his Eſtate is fraudulent *prout nobis ſatis liquet.* *R.* 2 *Co.* 54.

So a falſe Recital of a Thing, which need not be recited, does not hurt. *Vide Ante,* (G. 4.)

So the Recital of a Conſideration which is falſe does not hurt: As, of the good Service by *A.* in War; where none was done. *Semb. Bro. Patent* 1.

## (G. 10.) When a Recital is neceſſary.

If the King grant a Reverſion upon an Eſtate for Life, or Years, he ought to make a Recital of the particular Eſtate, otherwiſe it will be void. *R.* 1 *Co.* 44. *a.* 50. *R.* 4 *Co.* 35. *b.* 8 *Co.* 56. *Sav.* 58, 9.

Or, a Reverſion expectant upon an Eſtate Tail. *Mo.* 206.

Tho' a ſubſequent Leaſe recites both the former Leaſes, the Leaſe not reciting the former will be void. *Sav.* 58, 9.

So, if he grant a Preſentation to *B.* after a Preſentation of *A.* without mentioning of it; the firſt ſhall not be revoked, but the 2d Preſentation is void. *Dy.* 339. *b.* 2 *Rol.* 188. *l.* 40. *R. cont.* 190. *l.* 30. *Vide Eſgliſe,* (H. 10.)

So, if the King grant an Office for Life, and afterwards grant the ſame Office *poſt Mortem, &c.* to another, he ought to recite the firſt Grant, tho' it is not properly a Reverſion. *R.* 2 *Rol.* 190. *l.* 20. 8 *Co.* 57. *a.*

So, if the King leaſe to *A.* and afterwards make a new Leaſe to him, without mentioning the firſt; it will be void, tho' it operates as a Surrender of the former Leaſe. *R.* 2 *Rol.* 190. *l.* 25.

But if the King make a Leaſe at Will, and afterwards grant the ſame Land to another, he need not mention the Leaſe at Will.

Or, a Grant, which imports a Charge or Truſt, without Fee or Profit. *Bro. Patent* 2.

So, if a Reverſion, depending upon an Eſtate for Life, or Years, come to the King; in the Grant of it he need not mention the Leaſe, becauſe it is not upon Record. *Bro. Patent* 93. *Per Moor acc. Sed And. cont. Mo.* 206. *Acc. Dy.* 233. *a.* 6 *Co.* 56. *a.* 2 *Rol.* 199. *l.* 10. 2 *Brownl.* 241. *Hard.* 499.

So, if the King leaſe a Copyhold, and afterwards grant the ſame Land to another. 2 *Rol.* 196. *l.* 50.

Or leaſe Part of a Manor, and afterwards leaſe the Manor to another, without Recital of the former Leaſe. *R.* 1 *And.* 46.

So, where the Recital of a Leaſe is neceſſary, it is ſufficient if he grant the Land in Leaſe for Life, or Years, or the Reverſion expectant upon ſuch Leaſe, without expreſs Mention of the Patent, or Date. *Bro. Patent* 96. 2 *Rol.* 190. *l.* 40. 191. *l.* 1.

So, if the Date be miſtaken. *Bro. Patent* 96. 2 *Rol.* 190. *l.* 45.

So, tho' the Patent does not recite the Leaſe, but concludes, *notwithſtanding it be in Leaſe for Life, or Years, of Record, or otherwiſe.* 2 *Rol.* 190. *l.* 50. *R.* 4 *Co.* 35. *b.*

So, if there be a Grant of a Reverſion expectant upon a Leaſe for Life, or Years. *R.* 4 *Co.* 35. *b.* 2 *Rol.* 191. *l.* 5.

So, if an Eſtate comes to the King, ſubject to a Leaſe for Life, and alſo for Years, and the King reciting the Leaſe for Life demiſes the Lands after the Death of the Life, or when they ſhall come to the King's Hands. *Dub.* For it does not appear, whether the King intended to demiſe the Reverſion or the Poſſeſſion. *Hard.* 499.

## (G. 11.) The King's Grant does not enure to a double Intent.

So the King's Grant cannot enure to a double Intent, but he ſhall be intended to be deceived: As, if he grant *tenere Placita coram* his Bailiffs, Steward, or Juſtice; if there are not ſuch Officers before the Grant, it does not enure to make ſuch Officers, and likewiſe to give Conuſance of Pleas to them. 2 *Rol.* 196. *l.* 42.

So, if he grant to a Spiritual Corporation a Church *in perpetuum*, it ſhall not enure to a Grant of the Church, and likewiſe to make an Appropriation. 2 *Rol.* 196. *l.* 45.

If he grant a Copyhold for Life, it does not enure to a Grant and Deſtruction of the Copyhold. 2 *Rol.* 196. *l.* 50.

If he leaſe for Years, a Leaſe afterwards to the ſame Leſſee for more Years, will be void. *Lane* 22.

If the King be deceived in his Grant it will be void, tho' made *ex certâ Scientiâ, &c.* *R.* 1 *Co.* 49. *Alt. Woods,* for that does not help a Falſity. *Per Manw.d Sav.* 5. *Vide Poſt,* (G. 12.)

## (G. 12.) How the King's Grant ſhall be expounded.

If the King's Grant can enure to two Intents, it ſhall be taken to the Intent, that makes moſt for the King's Benefit. 21 *Ed.* 4. 48. *b.* 2 *R.* 3. 4. *Co. Ent.* 384. *a.* *Vide Ante,* (E. 9, &c.)

And therefore, it ſhall be conſtrued ſtrictly: As, if the King grant a Manor purchaſed by him, with all Franchiſes belonging, *&c.* the Franchiſes in the Hands of the Feoffor do not paſs; for by the Purchaſe of the King they are re-annexed to the Crown. 2 *Rol.* 184. *l.* 50. 193. *l.* 30.

If he grant a Manor with all Lands, *&c.* accepted or reputed as Parcel; nothing paſſes which is not Parcel in Truth and of Right. *R.* 2 *Rol.* 186. *l.* 25.

And it muſt have been Parcel Time out of Mind, *&c.* 2 *Rol.* 186. *l.* 30.

If the King grant all the Iſſues, Fines, and Amerciaments of his own Tenants; the Grantee ſhall not have the Amerciaments of him, who holds of the Grantee and another. 2 *Rol.* 193. *l. ult.*

If he grant a Diſcharge from all Cuſtoms, it ſhall not be extended to *magna & nova Cuſtuma*, tho' there has been an Uſage for Diſcharge from them. *Q.* 2 *Rol.* 194. *l.* 10.

If he grant a Forfeiture for a Treſpaſs, or other Offence for which a Man ſhall loſe Life or Member, it does not extend to a Forfeiture upon an Outlawry, or *Præmunire.* 2 *Rol.* 194. *l.* 35, 42.

If he grant *Bona & Catalla ſua*, it does not paſs Specialties. 2 *Rol.* 195. *l.* 20.

If he grant *Bona & Catalla Felonum de hominibus ſuis*, it does not extend to Goods of his Homagers without ſpecial Uſage. 2 *Rol.* 195. *l.* 10.

If he grant Services, and that the Grantee ſhall be as free as the King in his Crown; that does not extend to the Diſcharge of a Corody, Penſion, Fine for Alienation, &c. 2 *Rol.* 195. *l.* 40, 45.

But the King's Grant ſhall have a reaſonable Conſtruction: As, if the King grant the Office of the King's Tennis Plays; he ſhall have the Office, when thoſe of the Houſehold play, as well as the King in Perſon. *R.* 8 *Co.* 45. *b.*

A Commiſſion to take ſinging Boys out of the Cathedrals for the King's Chapel ſhall be conſtrued of thoſe, who get a Livelihood there by ſinging, not of the Son of a Gentleman who is inſtructed there. *R.* 8 *Co.* 46. *a.*

If Queen *Elizabeth* had granted a Manor with all Woods, &c. *modo vel antehac reputat' Parcell'*; a Wood Parcel in the Time of *Ed.* 6. paſſes, tho' not if it was of a longer Time, unleſs *unquam antehac* was added. *R. Dy.* 362. *a. Co. Ent.* 384. *a.* 2 *Rol.* 186. *l.* 15.

If ſhe had granted *totam Rectoriam ſuam* in the ſingular Number, tho' there were originally 2 Rectories, and they were appropriated ſeverally in the Time of *Ed.* 3. it will be good, being reputed as one from the Time of *Ed.* 3. *R.* 2 *Rol.* 186. *l.* 50.

If the King grant the Rectory of *M.* in the County of *N.* with all Lands Tithes, &c. *eædem Rectoriæ ſpectan'*; Tithes, &c. in the County of *York* belonging to it, paſs. *Semb. Sav.* 55.

So, where the King's Grant is capable of 2 Conſtructions, by the one of which it will be valid, and by the other void, Conſtruction ſhall be made to make it valid; for that will be more for the Benefit of the Subject and the Honour of the King, which ought to be more regarded than his Profit. *R.* 9 *Co.* 131. *a.* 10 *Co.* 67. *b.* *R.* 6 *Co.* 6.

As, if there be a Grant to diſcharge one from the Collection of Tithes granted *per Clerum Angliæ*; he ſhall be diſcharged if the Grant be *per Clerum Provinciæ Cantuarienſis*: for it is not uſual to have a Grant by both Provinces together. *R.* 21 *Ed.* 4. 48. *b.* *R. per all the J.* 2 *R.* 3. 4.

If the King grant all Lands, Tenements, and Hereditaments to a Priory *pertin'*, and all Piſcaries, &c. *ſpectan'* to the ſaid Manor; a Piſcary, &c. in groſs paſſes: for it was not reſtrained by the laſt, being within the firſt Words. *R.* 2 *Rol.* 185. *l.* 50.

If the King grant a Manor and all Waifs, Eſtrays, *Bona Felonum*, &c. *eidem Manerio ſpectan'*; *Bona Felonum*, &c. which cannot be claimed by Preſcription without Charter, paſs, tho' never uſed with the Manor. *R.* 2 *Rol.* 192. *l.* 45. 9 *Co.* 27. *b.*

So, if the King's Grant be *ex certâ Scientiâ & mero Motu*, it ſhall be taken more ſtrongly againſt the King, and beneficial for the Subject: As, if the King pardon a Sheriff all Contempts, he ſhall be excuſed of a falſe Return. 36 *H.* 6. 24. *b.* 37 *H.* 6. 21. *b.* *Co. Ent.* 384.

If he pardon *A. B.* all Debts *ex certâ Scientiâ*, &c. Debts as Sheriff are diſcharged, as well as others. *R.* 2 *R.* 3. 7. *a.* *R.* 1 *H.* 7. 13. *a.* *Agr.* 1 *Ca.* 49. *a.*

So a Grant *ex certâ Scientiâ*, &c. diſpenſes with Uncertainties. *Per Manw. & Sav.* 5.

But a Grant *ex certâ Scientiâ*, &c. ſhall not be expounded contrary to the proper Signification of the Words: As, if he grant a Portion of Tithes in *N.* where he has only Tithes Parcel of a Rectory, it ſhall not be extended to them: for *Portio Decimarum* imports Tithes in Groſs. *R.* 4 *Co.* 35. *a.*

So a Grant of all the Demeſnes Lands of a Manor ſhall not be extended to Copyholds, tho' by Law they are Parcel of the Demeſnes. *R.* 1 *Ca.* 46. *b.*

*Vide* more relating to *Grant*, in *Annuity*, (A. 1, &c.)—*Biens*, (D. 2.)—*Chimin*, (D. 3.)—*Common*, (O.)—*Condition*, (A. 2, 3.—D. 4.)—*Copybold*, (C. 1, &c.)—*Courts*, (P. 1.)—*Ireland*, (D.)—*Liberties*, (B.)—*Market*, (C. 1, &c.)—*Officer*, (B. 1, &c.)—*Pardon*, (A.—B.—G.)—*Prærogative*, (D. 24.)—*Rent*, (C. 8.)—*Toll*, (G. 2.)

## GREAT SEAL.

*Vide Patent*, (C. 2.)

## GREEN CLOTH.

*Vide Courts*, (G.)

## GUERNSEY. (Isle of,)

*Vide Navigation*, (F. 4.)

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## HABEAS

# HABEAS CORPUS.

## (A) By what Court granted.

AN *Habeas Corpus* is a Writ for bringing the Body of him, who is impriſoned, before the Court, *cum Cauſâ Detentionis*.

And it may be granted, in reſpect of an unlawful Commitment, or in Reſpect of a Privilege which the Party claims, to be impriſoned elſewhere.

By the Common Law, the Writ of *Habeas Corpus cum Cauſâ Detentionis* might be granted out of the *Chancery* within the Term, or Vacation; for the *Chancery* is always open. 2 *Inſt.* 53. 4 *Inſt.* 81, 290.

And by *B. R.* within Term. 2 *Inſt.* 53. 4 *Inſt.* 81, 290.

And that, in all Caſes for Perſons privileged or not privileged. 2 *Inſt.* 52, 53. 4 *Inſt.* 71, 290.

So it lies out of *C. B.* or *Exchequer*, for Perſons there privileged. 2 *Inſt.* 53. *Marg.* 4 *Inſt.* 290. 2 *H. Hiſt. P. C.* 144.

So, tho' they are not privileged there. *Vau.* 154, 155, 156. 2 *Jon.* 13, 17. *R. Cont. per* 3 *J.* 2 *Mod.* 198. *Semb.* 2 *Mod.* 306. *Cont. per North* 1 *Mod.* 235. It ſhall not be granted. 2 *Vent.* 24. *R. acc. per* 3 *J. Vaughan cont. Cart.* 222.

But tho' an *Habeas Corpus* may be granted by *C. B.* yet it is not the proper Court for it; becauſe it cannot diſcharge, or intermeddle as *B. R.* may, if it is a Criminal Matter. *Per Vaughan, Cart.* 222.

By the *St.* 31 *Car.* 2. 2. An *Habeas Corpus* may be obtained in Term out of the Court of *Chancery*, or *Exchequer*, as well as *B. R.* or *C. B.* by any Priſoner.

And in Vacation on Complaint, *&c.* the Chancellor or Keeper, any Juſtice of the one Bench, or the other, or Baron of the Coif, ſhall on view of the Copy of the Commitment, or Oath of Denial of the Copy of it, and Requeſt of the Party, or ſome other in his Behalf, in Writing ſubſcribed by 2 Witneſſes preſent at the Delivery, award an *Habeas Corpus* to the Officer, in whoſe Cuſtody the Party is, returnable *immediatè* before himſelf, or ſome other Juſtice, or Baron, under the Seal of the Court whereof he is a Judge, *&c.* on Pain of 500*l.* to the Party grieved.

And it may be directed and run to any County Palatine, *Cinque Port*, or other privileged Place in *England*, *Jerſey*, or *Guernſey*. *Lat.* 160.

So, to *Ireland*. *Semb.* 1 *Vent.* 357.

So it lies, tho' a *Certiorari* be taken away in ſuch Caſe by Statute. *Per Hale*, 1 *Mod.* 102.

## (B) For what Cauſe. Habeas Corpus ad Subjiciendum et Recipiendum.

*Vide Poſt*, (G. 1, 2.—H. 1, 2.)

AN *Habeas Corpus* ought to be granted of Right. *R.* 2 *Inſt.* 615. *R. in Parl.* 1 *Ruſhw.* 513.

And therefore, if a Man be impriſoned for any Cauſe, except upon a Conviction for a Crime, or in Execution, he may have an *Habeas Corpus cum Cauſâ Detentionis, &c.* 2 *Inſt.* 52. 2 *H. Hiſt.* 143.

So, by the *St.* 31 *Car.* 2. 2. A Perſon committed or detained for any Crime, unleſs for Treaſon or Felony plainly expreſſed in the Warrant, (other than Perſons convict, or in Execution by legal Proceſs,) may in Vacation complain or appeal to the Chancellor, Juſtice, or Baron, *&c.* who ſhall award an *Habeas Corpus*, *&c.*

And by this Statute *C. B.* has Juriſdiction to bail, diſcharge, or remand. 2 *H. Hiſt.* 144.

And if the Crime appears, *C. B.* may bail *quoad* the Action, and remand *quoad* the Crime. 2 *H. Hiſt.* 144.

If he be committed by Warrant of the Chief Juſtice of *B. R.* he ought to be brought to the Court by *Habeas Corpus*, not by Rule. 1 *Sal.* 349.

So, if a Perſon be lawfully impriſoned, and afterwards unlawfully detained, he may have an *Habeas Corpus* for his Diſcharge: As, if a Foreſter take a Man with the Manner within a Foreſt, or a Man be indicted for killing or hunting a Deer in the Foreſt, as he may, who afterwards offers ſufficient Pledges which are refuſed; the Offender ſhall have an *Habeas Corpus*, whereupon he ſhall be bailed for his Appearance at the next *Eyre*. 4 *Inſt.* 290.

## (C) When it ſhall not be allowed.

BUT by the *St.* 2 *H.* 5. 2. None ſhall be diſcharged, or bailed upon an *Habeas Corpus cum Cauſâ*, *&c.* if it be returned, that he is in Priſon on Condemnation by Judgment againſt him, but he ſhall be remanded and kept in ſafe Cuſtody till Agreement of the Party, or Payment of the Sum adjudged.

So, by the *St.* 31 *Car.* 2. 2. A Perſon committed for Treaſon or Felony, plainly expreſſed in the Warrant of Commitment, or convict, or in Execution by legal Proceſs, is not intitled to an *Habeas Corpus* in Vacation by Force of that Act.

Nor, a Perſon wilfully neglecting to pray an *Habeas Corpus* by the Space of 2 whole Terms after his Impriſonment.

So a Peer, impeached by the Houſe of Commons for High Treaſon, is not *de jure* bailable in *B. R.* nor ſhall be bailed in Diſcretion, tho' he has continued 2 Years in Cuſtody; not being within the *St.* 31 *Car.* 2. *R. Ray.* 381.

So a Perſon, committed by the Houſe of Peers, or of Commons, being a Member of the ſame Houſe, ſhall not be diſcharged upon an *Habeas Corpus*. *R.* 1 *Mod.* 157, 158. *L.d Shaftſbury.*

Nor, bailed during the Seſſion of Parliament. *R.* 1 *Mod.* 157, 158. *Per S.r W. Jones in Parl.* 30 *Dec.r* 1680.

Though the Commitment be only for a Miſdemeanor. 1 *Mod.* 158.

So a Perſon committed by the Houſe of Commons for a Breach of Privilege. *Per* 3 *J. Holt cont. Sal.* 503.

So, if it be uſed for avoiding a lawful Suit, upon ſhewing of this at the Return, the Court will grant a *Procedendo*. 1 *Sal.* 8.

## (D) How it ſhall be awarded.

BY the *St.* 1 & 2 *Ph. & M.* 13. No *Habeas Corpus*, *&c.* ſhall be granted to remove a Priſoner, unleſs ſigned by the Ch. Juſt. or in his Abſence by ſome other Juſtice of the Court, on Pain that the Writer forfeit 5*l.*

By the *St.* 31 *Car.* 2. 2. An *Habeas Corpus* granted purſuant to that Act, ſhall be indorſed, *Per St.* 31 *Car.* 2. *Regis*, and ſigned by the Judge that awards it.

If an *Habeas Corpus* be awarded for any one in Priſon for a Crime, it ſhall not be without Motion. 1 *Lev.* 1. 2 *Mod.* 306.

Otherwiſe, where it is for another Perſon. 1 *Lev.* 1.

So an *Habeas Corpus* muſt be directed to the Officer in whoſe Cuſtody the Priſoner remains. *St.* 31 *Car.* 2. 2.

And therefore, if it be to the Sheriff *or* Gaoler, it is bad. *R.* 1 *Sal.* 350.

## (E. 1.) How returned.

BY the *St.* 31 *Car.* 2. 2. If an *Habeas Corpus* be ſerved upon an Officer who hath the Cuſtody, or left at the Gaol with the Underkeeper, *&c.* he ſhall in 3 Days after Delivery, (if within 20 Miles, or in 10 Days if above 20 and under 100 Miles, or in 20 Days, if above 100 Miles,) return the Writ, and bring the Body, and certify the true Cauſe of Detainer, or Impriſonment, according to the Command of the Writ, on Payment of 12*d.* *per* Mile, and the Party's own Bond to pay the Charge of the Return if remanded, and not to make Eſcape by the Way.

If the Officer refuſe to make a Return, or bring the Body, *&c.* or to give a Copy of the Warrant of Commitment in 6 Hours after Demand, he ſhall for the firſt Offence forfeit 100*l.* and for the 2d Offence 200*l.* and be incapable of Office.

And a Recovery or Judgment by any Party grieved ſhall be a ſufficient Conviction for the firſt Offence, and any After-Recovery by a Party grieved for any Offence after the firſt Judgment ſhall be a ſufficient Conviction to bring the Party under the Penalty for the 2d Offence.

The Officer muſt ſhew by his Return, by whom the Party was committed, and the Cauſe of the Commitment. 2 *Inſt.* 55.

And if he does not make a Return after Delivery of the Writ, an Attachment lies againſt him. 2 *Jon.* 178.

Tho' his Charges are refuſed; for the Court taxes and compels the Payment of the Charges, if the Officer and Priſoner do not agree, or he does not pay according to the Agreement. *R.* 2 *Jon.* 178.

By the Common Law, if an *Habeas Corpus* be not returned, an *Alias* and *Pluries* lie, and afterwards an Attachment. 2 *Lev.* 129.

And the Return ought to be made within 3 Months. 1 *Sid.* 78.

But where the Commitment is for Treaſon or Felony plainly expreſſed in the Warrant, the Officer is not obliged by the *St.* 31 *Car.* 2. 2. to make a Return, as directed by that Statute.

## (E. 2.) What ſhall be a good Return.

*Vide in Mandamus*, (D. 3, *&c.*)

The Return to an *Habeas Corpus* ought to ſhew the Cauſe of Commitment ſpecially and certainly. 2 *Inſt.* 55. *R. Cro. Car.* 507. *R. Vau.* 137. *Pal.* 558.

And therefore, if the Return be, *that he was committed for a Contempt in not performing an Order between A. and B. made upon* 3*d Day of M.* it will be good. *R. Mo.* 840.

Or, *for not performing an Order in the Star Chamber for ſuch and ſuch Words.* *R. Cro. Car.* 168.

Or, *not performing an Order of the Exchequer for Payment of a Fine*, without ſaying, for what Cauſe impoſed; for it is a Court of Juſtice. *R. Cro. Car.* 579.

Or,

Or, *for Suſpicion of Treaſon*, without ſaying, what Species of Treaſon. *Semb. Pal.* 558.

So, if the Return ſhews a good Cauſe of Commitment it will be good, altho' it wants Form: As, if the Return ſays, *that it was awarded in Court, quod remaneat in Cuſtody for a Fine*, without ſaying, *quod Committitur pro fine. R.* 5 *Mod.* 24. 1 *Sal.* 348.

If it ſhews a Judgment by the Court of Admiralty, *&c.* tho' the Proceeding be irregular. *R.* 2 *Rol.* 157.

## (E. 3.) What not.

But a Return is inſufficient, if it does not ſhew an expreſs and certain Cauſe of Commitment. 2 *Inſt.* 55. *R. Vau.* 137.

As, if a Return be, *that the Commitment was for a Contempt of the Court of Chancery*, without ſhewing, wherein the Contempt was. *Mo.* 839, 840.

Or, *for giving a Verdict contrary to Law, to the Oath, or the Evidence*, without ſaying, what the Evidence was. *R. Vau.* 137. 2 *Jon.* 15.

Or, *for a Contempt of a Command. Mo.* 839.

Or, *a Contempt contrary to an Order or Decree of the Court. Mo.* 839.

Or, *Contrary to an Order between A. and B. Mo.* 839.

Or, *for Refuſal of an Anſwer to Articles before the High Commiſſioners*, without ſaying, what Articles; for perhaps they were not within their Juriſdiction. *R. Mo.* 840.

Or, *for ill Behaviour, or Words to the Privy Council*, without ſaying, what Words. *R. Cro. Car.* 133.

Or, *by a Precept of the Secretary of State, &c. R.* 2 *Leo.* 175.

Or, *of the Privy Council.* 4 *Leo.* 21. *Cont. R. acc.* 3 *Leo.* 194.

Or, *by Command of the Commiſſioners in Cauſes Eccleſiaſtical. R.* 4 *Leo.* 21.

So, a Return, *that he was committed for aiding the Eſcape of one in Cuſtody for High Treaſon*, without ſaying, what Species of Treaſon, is bad. *Semb.* 5 *Mod.* 83, 85. 1 *Sal.* 347.

*That he was committed for refuſing Sureties for his good Behaviour*, without ſaying, in what Sum. *R.* 2 *Vent.* 23.

Or, *for Refuſal to account for Toll, and till he do account*, without ſaying, for what Sum. *R. F,g.* 266.

So, if a Return be, *that he was committed upon Complaint for ſuch an Offence, and there being Cauſe upon Examination to ſuſpect him*, without an expreſs Charge of any Offence. *R.* 2 *Vent.* 23.

If a Return be, *that upon a Plaint in an Action upon the Caſe in ſuch a Court exitus eſt junctus & pendet indiſcuſſus*, it is bad; for it ought to return the whole Declaration, whereby the Cauſe of Action may appear to the Court. *R. Carth.* 75.

And if the Plaintiff has not declared at the Delivery of the Writ, he ought to declare immediately; that it may be returned. *Carth.* 75.

So, if the Commitment was by Warrant, the Return ought to ſhew the Warrant itſelf. *Semb.* 5 *Mod.* 159, 162. *R.* 1 *Sal.* 349.

If it was by the Court to a proper Officer preſent without Warrant, he ought to return the whole Truth of the Fact. *R.* 1 *Sal.* 349.

If he was committed by a Warrant upon a Writ *de Excommunicato capiendo*, the Writ ought to be returned as well as the Warrant. *R.* 1 *Sal.* 350.

If a Return be upon an *Habeas Corpus Alias*, or *Pluries*, it ought to ſay, *that he was not, &c. at the Time of the firſt Writ.* 2 *Lev.* 129.

Yet the Default of an Averment of a Fact in a Return may be amended in Court. *Per Hale*, 1 *Mod.* 103.

So, the Omiſſion of the Words, in which the Contempt conſiſts. *Cro. Car.* 133.

If a Return be inſufficient, the Officer ſhall be amerced. 1 *Sal.* 350. *Vide in Return,* (F. 3.)

And an *Alias Habeas Corpus* goes, and afterwards, if no Return, or a bad one, an Attachment. 1 *Sal.* 350.

## (F) When the Party ſhall be diſcharged, or remanded.

AT the Return of an *Habeas Corpus* the Court, generally, ought to diſcharge, or remand the Party. 2 *Inſt.* 55. 2 *H. Hiſt.* 143.

And therefore, if the Return ſhews no Cauſe, or no ſufficient Cauſe for the Impriſonment and Detainer, he ſhall be diſcharged. 2 *Inſt.* 55, 615. *R. Vau.* 156.

And that always in *C. B.* and in the *Exchequer*. *Vau.* 157.

But, if the Return ſhews a ſufficient Cauſe, he ſhall be remanded. 2 *Inſt.* 55.

So, if the Cauſe ſhewn appears ſufficient, tho' it be falſe. *R.* 9 *H.* 6. 44. *a.*

So, if the Cauſe be ſufficient, but the Return be defective in Form. *R.* 1 *Sal.* 348.

Yet *B. R.* may bail if they pleaſe, tho' the Return be ſufficient. 2 *Inſt.* 55. *Vau.* 157. 1 *Sid.* 78.

Or, before it be determined, whether the Return be ſufficient, or not. 5 *Mod.* 23.

So, pending the Debate whether it be ſufficient, *B. R.* may remand to the ſame Priſon, or to the Marſhalſea. *R.* 1 *Vent.* 330, 346.

And by the *St.* 31 *Car.* 2. 2. The Chancellor, Judge, or Baron in 2 Days after the Party brought before him on an *Habeas Corpus* in Vacation purſuant to that Statute, ſhall diſcharge the Priſoner, on a Recognizance with one or more Sureties to appear in *B. R.* next Term, or at the next Aſſiſes, *&c.* where he ſhall certify the ſaid Writ, Return, and Recognizance, unleſs he was committed by legal Proceſs, *&c.* from a Court that hath Juriſdiction, or a Warrant of a Judge or Juſtice for an Offence for which he is not bailable.

Or, if committed as Acceſſory before to Petit Treaſon or Felony, or on Suſpicion of it, where the Petit Treaſon or Felony is ſpecially expreſſed in the Warrant, he ſhall not be bailable otherwiſe than as before that Act.

## (G. 1.) Habeas Corpus ad Faciendum, et Recipiendum.

*Vide Ante,* (B.) — *Poſt,* (H. 1, 2.)

SO an *Habeas Corpus* lies for a Perſon, committed within an inferior Juriſdiction, upon a Pretence of Privilege, to be ſued in a ſuperior Court.

The Form of the Writ is, *ad faciendum & recipiendum, &c.* 1 *Mod.* 235. *Off. Br.* 110, 112. *Th. Br.* 131.

And ſuch Writ goes to every inferior Court.

To the *Cinque Ports.* 1 *Mod.* 20.

To the Governor of *Jerſey*, or *Guernſey.* 1 *Sid.* 386.

If an *Habeas Corpus* be delivered to an inferior Court and the Judge there proceeds afterwards; the Proceeding will be erroneous and *coram non Judice,* and ſhall be reverſed for this Cauſe. *R.* 2 *Jon.* 209. *R.* 1 *Sal.* 352.

Or a *Superſedeas* ſhall go. *Cro. Car.* 79.

So

So the Judge may be puniſhed by Attachment for his Contempt. 3 *Mod.* 85.

Tho' the Return be at a Day after the End of the Term. *R.* 1 *Mod.* 195.

After an *Habeas Corpus*, which removes the Cauſe to *B. R. &c.* the Plaintiff muſt commence *de novo*. *R.* 1 *Sal.* 352.

## (G. 2.) When it ſhall not be allowed.

But by the *St.* 43 *El.* 5. An *Habeas Corpus, &c.* ſhall not be allowed to, remove a Cauſe in an inferior Court, after any of the Jury ſworn; but the Steward, *&c.* may proceed.

So, by the *St.* 21 *Jac.* 23. No *Habeas Corpus, Certiorari, &c.* ſhall be received or allowed, to remove any Action, *&c.* depending in any inferior Court of Record, which hath Juriſdiction, the Cauſe of Action ariſing within the Juriſdiction, unleſs delivered before Iſſue or Demurrer joined, ſo as it be not joined within 6 Weeks after the Arreſt or Appearance of the Defendant; but the Steward, Judge, *&c.* may proceed as if no Writ delivered.

Nor, to ſtay or remove any Action, *&c.* not concerning the Title of Land, Leaſe, or Rent, if it appears by the Declaration, that the Debt, Damages, or Demand exceed not 5 *l.*

Or, any Action before remanded by *Procedendo*.

So, by the *St.* 12 *Geo.* 29. A Judge deſcribed in the *St.* 21 *Jac.* 23. may proceed, *&c.* where the Cauſe of Action appears, or is laid not to exceed 5 *l.* tho' there be other Actions of higher Value againſt the ſame Defendant.

Yet, if the Cauſe of Action does not ariſe within the Juriſdiction of the Court, an *Habeas Corpus* ought to be allowed. *R. Cro. Car.* 79.

So, by the *St.* 21 *Jac.* 23. That Act does not extend to an Action wherein a foreign or other Plea is pleaded, which cannot be tried or determined within the Juriſdiction.

Or, if no Utter Barriſter of 3 Years ſtanding at the Bar be Steward, Town-Clerk, Judge, or Recorder, or Aſſiſtant to the Judge of ſuch Court, and there preſent, and not Counſel in any Cauſe there.

And therefore, if an *Habeas Corpus* be delivered after Iſſue, if the Judge proceed, not being an Utter Barriſter, an Attachment ſhall go. *R.* 3 *Mod.* 85. *Cro. Car.* 79.

If the Steward, *&c.* be an Utter Barriſter, if he be preſent only by a Deputy, who is not an Utter Barriſter. *Cro. Car.* 79.

So, if an Utter Barriſter be Steward, he ſhall be in Contempt if he does not return the Writ with the ſpecial Matter. *R. Carth.* 69.

So upon an *Habeas Corpus* to remove a Cauſe out of an inferior Court, a *Procedendo* ſhall be awarded, if it appears, that the Action is maintainable there only. *R. Carth.* 75.

So, if an *Habeas Corpus* be after an interlocutory Judgment, and before final Judgment, and before the Return the Defendant dies; for otherwiſe the Plaintiff cannot have a *Scire facias*, which is given againſt the Executor by the *St.* 8 & 9 *W.* 3. 11. and muſt be out of the Court where Judgment is given. *R.* 1 *Sal.* 352.

A *Procedendo* may be awarded after the Return of an *Habeas Corpus* filed; for the Record itſelf is not thereby removed, but the inferior Court ſuſpended only. *R.* 1 *Sal.* 352.

## (H. 1.) Habeas Corpus ad Reſpondendum.

*Vide Ante.* (B.—G. 1, 2)

SO an *Habeas Corpus* lies to bring up a Man in Priſon to the Bar, and to be charged at the Suit of another. 1 *Mod.* 235. *Off. Br.* 110. *Theſ. Br.* 131.

Or, for an Huſband and Wife, that he alone may be charged, and the Wife diſmiſſed. 1 *Lev.* 1.

So it lies, where a Man has Privilege in *C. B.* and is there ſued; and if upon the Return it appears, that he is committed without Cauſe, or by a Court not having Juriſdiction, he ſhall have his Privilege. 2 *H. Hiſt.* 144.

If it be doubtful, he ſhall be bailed to appear in *B. R.* 2 *H. Hiſt.* 144.

### (H. 2.) To what Court.

An *Habeas Corpus ad Reſpondendum* does not lie to a County Palatine. 1 *Sal.* 354.

A Man brought by an *Habeas Corpus ad Reſpondendum* to *B. R.* ſhall not by another *Habeas Corpus* be removed to the Fleet till he has anſwered in *B. R.* 1 *Sal.* 350.

So a Man in Execution upon a Sentence in the Admiralty ſhall not be removed by an *Habeas Corpus ad Reſpondendum*, and committed to the Marſhal of *B. R.* before an Action there depending. *R.* 1 *Sal.* 351.

Or, if taken up for a Miſdemeanor, and then charged with an Extent at the Suit of the King, he ſhall not be brought up by *Habeas Corpus* to be declared againſt in *B. R.* *R.* 1 *Sal.* 354.

## (I) How an Habeas Corpus ſhall be made returnable.

AN *Habeas Corpus cum Cauſâ* directed to the Sheriffs of *London* and *Middleſex* may be made returnable *immediatè* before the Court of *Exchequer*, or a Baron in Vacation. *Per Rule.*

So, an *Habeas Corpus* for ſurrendring a Man in diſcharge of his Bail.

But, generally, an *Habeas Corpus* ſhall be returnable at a Day-certain.

And therefore, an *Habeas Corpus ad Reſpondendum*, or *Satisfaciendum* to the Warden of the Fleet, Marſhal of *B. R.* or Keeper of an inferior Priſon, ſhall be returned into Court at a Day certain.

If upon an *Habeas Corpus* the Priſoner be returned to be charged with Proceſs out of *B. R.* or *C. B.* he ſhall be committed with thoſe Cauſes, tho' the Proceſs in *B. R.* or *C. B.* was returnable at a future Day.

## Bail in an Habeas Corpus.

*Vide Bail*, (I.)

# HABENDUM.

*Vide Fait*, (E. 9, 10.)

## HABERE FACIAS POSSESSIONEM.

*Vide Execution*, (A. 5.)

## HABERE FACIAS SEISINAM.

*Vide Execution*, (A. 2, 3.)

## HAMLET.

*Vide Pariſh.*

## HARES.

*Vide Juſtices of Peace*, (B. 49.)

## HAVEN.

*Vide Navigation*, (D.)

## HAWKING.

*Vide Chaſe*, (H. 1, &c.)—*Juſtices of Peace*, (B. 45.)

## HAY.

*Vide Diſmes*, (H. 2.)

## HEARING.

*Vide Chancery*, (M.—S.—T. 1, &c.—Y. 5.)

# H E I R.

## (A) Heir.

WHEN, and who ſhall take by Deſcent, and who ſhall be Heir, who not, *Vide* in *Diſcent*, (A.—B.—C. 1, &c.)

When he ſhall be bound to the Debt of his Anceſtor, *Vide Aſſets*, (A.—B.)—*Covenant*, (C. 2.)—*Chancery*, (2 G. 1, &c.—3 P. 1, &c.)—*Pleader*, (2 E. 1, &c.)

If the Perſon of the Anceſtor be bound in reſpect of his Land, which deſcends to the Heir, he ſhall be charged: As, if by a Subſidy to be aſſeſſed upon every one having 20*s. per Annum*, *A.* be charged and die; his Heir ſhall pay it, for it runs with the Land. *R. Mo.* 17.

*Heir* is *Nomen collectivum*; and therefore, if a Condition be, *that if his Heir does not pay ſuch a Rent Charge, the Eſtate ſhall go to B.* if the Heir of the Heir does not pay, the Condition is broken. *R.* 2 *Cro.* 145.

What Goods and Chattels go to the Heir, *Vide Biens*, (B.)

*Vide* more concerning *Heir* in *Abatement*, (F. 9.)—*Copyhold*, (D. 2.)—*Covenant*, (B. 2.)—*Deviſe*, (N. 22.)—*Dett*, (G. 5.)—*Eſcheat*, (A. 1.)—*Eſtates*, (B. 8.)—*Gardian, per Totum.*—*Ideot*, (D. 5.)—*Parceners*, (A. 3.)—*Pleader*, (3 L. 13.)

# H E I M P.

*Vide Diſmes*, (H. 13.)

# H E I R A L D.

*Vide Courts*, (E. 3.)—*Norroy*, (A.—B.)

# H E R E D I T A M E N T.

*Vide Grant*, (E. 1.)

# HERESY.

## (A) What ſhall be.

BY the *St.* 1 *El.* 1. No Determination, *&c.* for any Matter of Religion, or Cauſe Eccleſiaſtical, made by Authority of that preſent Parliament, ſhall be deemed, or adjudged Hereſy, Schiſm, or Schiſmatical Opinion.

And Perſons, to whom the Queen, her Heirs or Succeſſors ſhall by Letters Patent, *&c.* give Authority to correct, *&c.* Errors, Hereſies, *&c.* ſhall not have Authority to determine or adjudge any Matter Hereſy, but ſuch as heretofore hath been adjudged Hereſy by the Authority of the Canonical Scriptures, or by the firſt 4 general Councils, or any of them, or by any other general Council wherein the ſame was declared Hereſy by the expreſs and plain Words of the Canonical Scriptures, or ſuch as ſhall hereafter be adjudged Hereſy by Parliament with Aſſent of the Clergy in Convocation.

But no Statute determines what ſhall be Hereſy. *H. P. C.* 3.

The *St.* 2 *H.* 4. 15. (which is now repealed) calls, Opinions contrary to the Catholick Faith, and Determination of Holy Church, Heretical Opinions.

The *St.* 31 *H.* 8. 14. enacts, that a Maintainer of an Opinion againſt the firſt of the 6 Articles ſhall be adjudged an Heretick; and the *St.* 34 *H.* 8. 1. If he maintain any Thing againſt the Inſtructions or Determinations of the King made or to be made, for the 3d Offence.—But theſe are now repealed.

By the Canon Law he was held an Heretick, *qui docet aut ſentit de Articulis Fidei aut Sacrament' aliter quam Sancta Eccleſia. Lind.* 292. *v. Declarentur.*

*Vel per quoſdam, contra Doctrinam Eccleſiæ licet non in Articulis Fidei. Lind.* 292, 3.

*Per alios, qui errat in Expoſitione ſacræ Scripturæ, aut contemnit ſervare quod Eccleſia Statuit. Lind.* 292.

By the Divines, Hereſy is nothing elſe but a Doctrine repugnant to ſome Article of the Chriſtian Faith, and ſuch is plain and formal Hereſy. *Chillingworth* 199.

By the Common Law, Hereſy is, *Malveis & faux Crime ou Error en droit Foy Chriſtian. Mirr.* 22.

## (B) How puniſhed.

### (B. 1.) Who have Conuſance of Hereſy.

(B. 1) Convocation.

BY the Common Law, a Conviction for Hereſy was before the Archbiſhops, and Biſhops in a general Synod. *H. P. C.* 5.

And therefore, the Archbiſhop and his Province in Convocation may and uſe to convict for Hereſy by the Common Law. *F. N. B.* 269. *D. Bro. Hereſy* 1. 12 *Co.* 56.

And the Conviction was by the Archbiſhop *de Conſenſu & Aſſenſu ac Conſilio Epiſcoporum, & Confratrum Suffragantium ſuorum, necnon totius Cleri Provinciæ ſuæ in Concilio ſuo provinciali Congregat'. Vide Breve de Hæret. Comb. F. N. B.* 269. *C.*

And therefore, the Convocation has Juriſdiction of Hereſy. 4 *Inſt.* 322.
And may iſſue a Citation againſt the Offender. *Keil.* 182. *b.*
In a Cauſe of Hereſy, the Convocation proceeds *juxta Legem Divinam & Canones Sanctæ Eccleſiæ.* 4 *Inſt.* 322.

(B. 2.) Archbiſhop.

So the Archbiſhop, as Ordinary, has Juriſdiction of Hereſy.
So, where, upon Default or Aſſent of the Ordinary, the Cauſe is tranſmitted to the Archbiſhop purſuant to the *St.* 23 *H.* 8. 9. *H. P. C.* 5.

(B. 3.) Other Ordinary.

So, by the Common Law, the Ordinary may proceed againſt an Heretick within his Dioceſe *pro Salute Animæ.* 12 *Co.* 57. *H. P. C.* 5.
So, by the *St.* 2 *H.* 4. 15. The Ordinary in his own Dioceſe might cauſe any ſuſpected of Hereſy to be arreſted and detained in Cuſtody till he had purged himſelf or recanted; And by himſelf or Commiſſaries might proceed judicially againſt him, and in 3 Months after Arreſt determine the ſame according to the Order of the Canon Law.
By the *St.* 2 *H.* 5. 7. Perſons indicted for Hereſy before Juſtices of *B. R.* of Aſſiſe, or Peace, and thereon taken by *Capias*, ſhall be delivered to the Ordinary of the Place, or their Commiſſaries by Indictment in 10 Days after Arreſt, to be by them acquitted, or convicted of the ſaid Hereſies according to the Laws of Holy Church. Provided ſuch Indictment be not taken in Evidence but only for Information by the Judges Spiritual, and that the Ordinary ſhall begin his Proceſs in the ſame Manner, as if no ſuch Indictment were.
By the *St.* 31 *H.* 8. 14. Commiſſions ſhall be awarded to the Biſhop of the Dioceſe, his Chancellor and Commiſſary, *&c.* to inquire of the Hereſy mentioned in that Act.
And by the *St.* 32 *H.* 8. 15. Such Commiſſions ſhall comprehend Archdeacons and their Officials by their Names of Office and Dignity, and not by their Chriſtian and Surnames.
By the *St.* 35 *H.* 8. 5. None ſhall be tried for Hereſy, *&c.* by the 6 Articles in *St.* 31 *H.* 8. 14. but on Accuſation by the Oath of 12 Men, or Indictment before Commiſſioners.
By the *St.* 25 *H.* 8. 14. (which repeals the *St.* 2 *H.* 4. 15.) A Perſon indicted for Hereſy, or accuſed by 2 Witneſſes, may be cited and committed by the Ordinary to anſwer in open Court, *&c.*
But by the *St.* 1 *Ed.* 6. 12. the Statutes 2 *H.* 5. 7. and 31 *H.* 8. 14. are repealed by expreſs Words, and by the general Words, *All Acts of Parliament concerning Religion or Opinions*, the Statutes 2 *H.* 4. 15. and 32 *H.* 8. 15. are repealed alſo. So, by the expreſs Words, the Statutes after mentioned; 5 *R.* 2. 5. 25 *H.* 8. 14. 34 *H.* 8. 1. and 35 *H.* 8. 5. are now repealed. 12 *Co.* 57. *Vide Poſt*, (B. 6.)
By the *St.* 13 *Car.* 2. 12. (which repeals the whole *St.* 16 *Car.* 1. 11. except ſo much as relates to the High Commiſſion Court,) The Archbiſhop, Biſhop, *&c.* may determine, exerciſe, *&c.* all Eccleſiaſtical Juriſdiction, and all Cenſures, Coercions, *&c.* belonging to the ſame before the *St.* 16 *Car.* 1. in all Cauſes, *&c.* according to the King's Eccleſiaſtical Laws.
And by the *St.* 29 *Car.* 2. 9. (which takes away the Writ *de Hæretico comburendo*) Nothing in that Act ſhall extend to take away or abridge the Juriſdiction of the Proteſtant Archbiſhops, Biſhops, *&c.* in Caſes of Atheiſm, Blaſphemy, Hereſy, or Schiſm, *&c.* but that they may proceed to puniſh the ſame according to the King's Eccleſiaſtical Laws by Excommunication, Deprivation, Degradation, and other Eccleſiaſtical Cenſures not extending to Death, in ſuch ſort and no other, as they might have done before the ſaid Act.

By the *St.* 2 *H.* 5. 7. (which is now repealed) the Juſtices of *B. R.* Aſſiſe, or of the Peace might inquire of all Hereſies, *&c.* and on Indictment for ſuch Offence might award a *Capias*, and when the Party was taken, deliver him to the Ordinary, *&c.* (B. 4.) Temporal Judge.

By the *St.* 31 *H.* 8. 14. Commiſſions were to be awarded to Juſtices of Peace, Stewards of Leets, Under Stewards, *&c.* to inquire of all Hereſies, Felonies, *&c.* by that Act; But this alſo is now repealed.

By the *St.* 25 *H.* 8. 14. Sheriffs in Turns, and Stewards in Leets, might inquire of Hereticks, and the Preſentment in the Turn or Leet was to be certified to the Ordinary. But this Act alſo is now repealed.

So, by the *St.* 1 *El.* 1. The Queen by Letters Patent might authoriſe ſuch Perſons being natural born Subjects as ſhe ſhould think fit, *&c.* to redreſs, *&c.* all ſuch Errors, Hereſies, *&c.* as by any Eccleſiaſtical Authority, *&c.* might be lawfully reformed.

And thereupon the Commiſſioners had Conuſance of Hereſy.

But now, by the *St.* 16 *Car.* 1. 11. This Clauſe of the *St.* 1 *El. &c.* ſhall be repealed.

## (B. 5.) Who have not Conuſance.

But, generally, Hereſy could not be tried by the Temporal Judge, by Indictment, or otherwiſe. *H. P. C.* 4. 27 *H.* 8. 14. *b.*

For by the *St. Circ. agatis* 13 *Ed.* 1. Court Chriſtian is allowed Conuſance *de his quæ ſunt mere Spiritualia*, which are, Hereſy, Schiſm, *&c.* 2 *Inſt.* 488.

Yet the Temporal Judge may take Conuſance, what Offence is not Hereſy, and ſhall adjudge thereon, whether it be Hereſy or not. *H. P. C.* 4. 1 *Rol.* 110.

So, if an Indictment be found for Hereſy, the Judge may certify to the Ordinary, and the Indictment ſhall be Evidence againſt the Indictee. 27 *H.* 8. 14. *b.*

## (B. 6.) What Penalty ſhall be inflicted.

By the Common Law, the Puniſhment of Hereſy before the Ordinary was only by Eccleſiaſtical Cenſures. 12 *Co.* 57.

And no Forfeiture was incurred thereby; for the Proſecution was intended only *pro Salute Animæ.* *H. P. C.* 5.

And the Writ *de Hæretico comburendo* does not lie upon it; for the Law does not allow the Deſtruction of the Life of a Man upon a Conviction before a ſingle Judge. *Semb. cont. F. N. B.* 269. *C.* *Acc.* 12 *Co.* 57. *Cert. cont. by ſome Judges, but ſaid, that it was clearly acc.* 12 *Co.* 93. *Bract. Lib.* 3 *c.* 9. *fo.* 123, 124.

*Mirr.* 22. only ſays, that an Heretick is removeable from the Community of the Holy People of God; and *Britt. c.* 9. ſays, that Miſcreants are burnt, but does not ſay how convicted. And the Writ *de Hæretico comb.* ſpeaks only of an Heretick convicted by the Archbiſhop in Convocation; with which *Fitzh.* agrees. *F. N. B.* 269. *C. D.*

But by the *St.* 5 *R.* 2. 5. Commiſſions might be directed to Sheriffs, *&c.* to impriſon ſuch whom the Ordinary ſhould certify to be Hereticks, till they juſtified themſelves according to the Laws of Holy Church.—But to this Statute the Commons never aſſented. 12 *Co.* 57, 58.

So, by the Common Law, a Man convicted of Hereſy by the Archbiſhop in his Provincial Synod, or Convocation, might be burnt by the Writ *de Hæretico*

*tico comburendo*, if he had abjured before, and was then relapſed. *F. N. B.* 269. *B. C. D.*

So, upon the firſt Conviction, if he refuſe Abjuration; otherwiſe, if he will abjure. *Fitz.* ſays, he ought to be firſt convicted and abjured. *F. N. B.* 269. *B.* But *per Bro.* it is ſufficient, that he refuſe Abjuration. *Bro. Hereſy* 1. There is a Q. in the Margin. *Vide the St.* 2 *H.* 4. 15. Q. 12 *Co.* 58.

Yet *Sawtre* ſeems to be the firſt Man burnt for Hereſy in *England*, and the Writ *de Hæret. comb.do* formed in his Caſe. *Fox's Martyr.* 502. (8th Edition 675.) *F. N. B.* 269. *C.*

By the *St.* 2 *H.* 4. 15. The Ordinary might keep a Convict in any of his own Priſons as long as he thought fit, and might fine, *&c.* Or, if he refuſe to abjure, or after Abjuration relapſe, (in which Caſe by the Canon Law he ought to be left to the Secular Power,) the Sheriff, Mayor, *&c.* who ſhould be preſent, if required, with the Ordinary, or his Commiſſary at giving Sentence, ſhould take the Convict, and cauſe him to be openly burned. *Vide the St. printed, Fox. M.* 507. (8th Edition 682.)

By this Statute, if the Sheriff was preſent, he might burn him without the Writ *de Hæretico comb.do* *R. Bro. Hereſy* 1. 12 *Co.* 56. *F. N. B.* 269. *D.*

Otherwiſe, if the Sheriff, *&c.* was abſent at the Sentence. *Bro. Hereſy* 1. 12 *Co.* 56.

And by the *St.* 25 *H.* 8. 14. (which repeals the *St.* 2 *H.* 4. 15.) upon a Conviction before the Ordinary, there muſt be the Writ *de Hæretico comb.do* *F. N. B.* 269. *D.* 12 *Co.* 57.

By the *St.* 2 *H.* 5. 7. A Convict of Hereſy was to forfeit his Lands in Fee, and all his Goods and Chattels. *Vide Fox M.* 549. (8th Edition 742.)

By the *St.* 34 *H.* 8. 1. He was to forfeit his Goods and Chattels for Hereſy by that Act.

By the *St.* 25 *H.* 8. 14. A Convict, if he refuſe to abjure, or after relapſe, was to be burnt: And this Statute repeals the 2 *H.* 4. 15.

Then, by the expreſs Words of the *St.* 1 *Ed.* 6. 12. the Statutes 5 *R.* 2. 5. 2 *H.* 5. 7. 25 *H.* 8. 14. 31 *H.* 8. 14. 34 *H.* 8. 1. and 35 *H.* 8. 5. are repealed; and by the general Words, *All Statutes concerning Religion or Opinions*, the *St.* 2 *H.* 4. 15. (which was revived by the Repeal of the *St.* 25 *H.* 8. 14.) and the *St.* 32 *H.* 8. 10, 15. are alſo repealed. But by the *St.* 1 & 2 *Ph. & M.* 6. the Statutes 5 *R.* 2. 5. 2 *H.* 4. 15. and 2 *H.* 5. 7. were revived; and afterwards repealed by the *St.* 1 *El.* 1. 12 *Co.* 57.

And ſo the Writ *de Hæretico comburendo* did not lie upon a Conviction before the Ordinary, but only upon a Conviction before the Archbiſhop in his Provincial Synod, or Convocation. 12 *Co.* 57.

Or, upon a Conviction before High Commiſſioners. 12 *Co.* 58.

But now, by the *St.* 29 *Car.* 2. 9. The Writ *de Hæretico comburendo* with all Proceſs thereon in order to execute ſuch Writ, and all Puniſhment by Death in Purſuance of any Eccleſiaſtical Cenſure, ſhall be utterly aboliſhed.

And before the *St.* 2 *H.* 4. 15. If an Heretick condemned was left to the Secular Power, the King might pardon him, if he pleaſed. *F. N. B.* 269. *B.*

# HERIOT.

*Vide Copyhold*, (K. 18, &c.)

HIGH

## HIGH CHAMBERLAIN.

*Vide Officer*, (E. 7.)

## HIGH CHANCELLOR.

*Vide Chancery*, (B. 1.)—*Juſtices*, (K. 8.)

## HIGH CONSTABLE.

*Vide Officer*, (E. 2.)

## HIGH STEWARD.

*Vide Officer*, (E. 4, &c.)

## HIGH TREASURER.

*Vide Officer*, (E. 1.)—*Juſtices*, (K. 8.)

## HIGH TREASON.

*Vide Forfeiture*, (B. 1, 2.)—*Juſtices*, (K. 1, &c.—X. 1.—Y. 3.)—*Utlagary*, (D. 1.)

## HIGH-WAY.

*Vide Chimin*, (A. 1, &c.—B. 1, &c.—C. 1, &c.)

## HOLY ORDERS.

*Vide Parſon*, (B. 1.)

# HOMAGE.

## (A) By what Tenures Land is holden.

ALL Lands in *England* are holden mediately or immediately of the King by ſome Tenure, or Service. *Co. L.* 1. 2 *Inſt.* 501. *Vide Tenure*, (A.)

Every Tenure is Spiritual; as, by *Frankalmoigne*.

Or Temporal; As, Homage, Fealty, Eſcuage, Grand or Petit Serjeanty, Knight's Service, and Socage. *Co. L.* 64.

To which may be added, Tenures in Burgage, and Villenage. *Co. L.* 64.

## (B) What are taken away.

BUT by the *St.* 12 *Car.* 2. 24. All Tenures by Homage, Eſcuage, Voyages Royal, and Charges incident to the ſame, by Knight's Service of the King or a Common Perſon, by Knight's Service or Socage *in Capite*, and all Wardſhips, Liveries, *Primer Seiſins*, *Ouſter-le-mains*, Values and Forfeitures of Marriage, mean Rates, Fines for Alienation, Pardons and Seiſures for Alienation, *Aide pur faire fitz Chivaler*, *& file marier*, and all Charges incident to or ariſing from any of them be taken away: And all Tenures turned into free and Common Socage.

And all Tenures created by the King for the future ſhall be Common Socage, notwithſtanding any Reſervation, *&c.*

## (C. 1.) Homage, What.

*HOMAGE* is the moſt honourable and humble Service that a Freeholder can do to his Lord. *Lit. S.* 85.

If a Layman does Homage, he being ungirt and uncovered ſhall kneel before his Lord, when ſitting, and ſhall hold his Hands between the Hands of the Lord, and ſhall ſay, *I become your Man of Life and Limb, and will be faithful and loyal to you for the Tenements which I claim to hold of you, ſaving the Faith which I owe to our Lord the King*; and then the Lord ſo ſitting ſhall kiſs him. *Lit. S.* 85.

If an Abbot or other Man of Religion, or a *Fême Sole* does Homage, they do not ſay, *I become your Man or Woman, &c.* but *I do Homage to you, and will be faithful, &c. Lit. S.* 86, 87.

If a Woman who holds by Homage, takes Huſband, before Iſſue the Huſband and Wife ſhall do Homage, and the Huſband ſhall ſay, *We do Homage to you, and will be faithful, &c. Lit. S.* 88. *Co. L.* 66. *a.*

After Iſſue, the Huſband alone in the Life of his Wife ſhall do Homage, *Lit. S.* 90.

If there are Co-heirs, who hold of the King and are of full Age, each of them ſhall do Homage: *Co. L.* 67. *a.*

If they are within Age, or hold of a Common Perſon, the eldeſt ſhall do Homage for herſelf and her Siſters. *Co. L.* 67. *a.*

## (C. 2.) Homage Anceſtrel.

If a Tenant and his Anceſtors Time out of Mind, *&c.* have held their Tenements by Homage of the Lord and his Anceſtors, and have done Homage, it ſhall be called, *Homage Anceſtrel.* *Lit. S.* 143.

## (D) Fealty.

*FEALTY* is a Service, which every Tenant ought to pay to his Lord, except Tenant in *Frankalmoigne.* *Co. L.* 67. *b.* 95. *b.*

Tho' he be only Tenant for Life, or Years. *Lit. S.* 93. *Co. L.* 67. *b.*

Tho' he be Tenant in *Frankmarriage.* *Lit. S.* 138.

So, if Tenant in *Frankalmoigne* alien to a Secular Man, he ſhall do Fealty. *Lit. S.* 139.

A Freeholder when he does Fealty, ſwears *to be faithful and loyal to his Lord for the Tenements which he claims to hold of him, and to do the Cuſtoms and Services which he ought to do at the Terms aſſigned.* *Lit. S.* 91.

A Villein ſwears, *that he will be faithful and loyal, &c. and will be juſtified by him in Body and Goods.* *Co. L.* 68. *a.*

And Fealty may be done to the Steward or Bailiff, as well as to the Lord himſelf. *Lit. S.* 92.

But Fealty muſt be done in Perſon, and not by Attorny. *Co. L.* 68.

## (E) Eſcuage.

HE that holds his Land by *Eſcuage*, holds by Knight's Service. *Lit. S.* 95.

## (F) Grand Serjeanty.

*GRAND Serjeanty* is, when a Man holds Lands to do a ſpecial Service in his Perſon to the King: As, to carry the King's Banner, Lance, *&c.* *Lit. S.* 153.

Or, to be his Marſhal, or Conductor of his Army. *Lit. S.* 153.

To be Sewer, Carver, Butler, *&c.* to the King at his Coronation. *Lit. S.* 153.

To carry his Sword before him at his Coronation. *Lit. S.* 153.

To be Chamberlain of the Receipt of the King's *Exchequer.* *Lit. S.* 153.

Or to be Chamberlain, Steward, Conſtable, *&c.* of *England.* *Co. L.* 106. *Dy.* 285. *b.*

## (G. 1.) Knight's Service.

THE Service of *Chivalry* is, when Land is given to another *tenendum per Servitium unius Militis*, or without rendring other Service; for then the Tenure ſhall be of the King by Knight's Service *in Capite.* *Wrt. Int.* 140.

And if the Tenure be by Homage, Fealty, and Eſcuage, that is a Tenure by Knight's Service. *Lit. S.* 103.

(G. 2.) What

## (G. 2.) What Incidents belong to it.

Tenure in *Chivalry* draws to it Ward, Marriage, and Relief. *Lit. S.* 103.

So Homage, Fealty, and Eſcuage are incident to ſuch a Tenure. *Co. L.* 76. *a.*

So Aid to the King *pur faire fitz Chivaler*, or *file marrier*.

For if Tenant by *Chivalry* dies, his Heir Male within Age, his Lord ſhall have the Ward of the Heir till his Age of 21 Years: And if the Heir be Female he ſhall have the Ward of her till her Age of 14. And by the *St. W.* 1. 22. till her Age of 16 Years; and if ſuch Heir be not married, the Lord ſhall have the Marriage alſo of ſuch Heir Male or Female. *Lit. S.* 103.

If the Heir Male be of full Age, or the Female of the Age of 14, at the Death of the Anceſtor, they ſhall not be in Ward, but ſhall pay Relief to the Lord. *Lit. S.* 103.

By the *St.* 32 *H.* 8. 1. and 34 *H.* 8. 5. He which holdeth Lands by Knight's Service may, by Act executed in his Life-time, or by his laſt Will in Writing, diſpoſe of two Parts thereof. But the Lord's Wardſhip of the third Part is ſaved. (*Vide Co. L.* 76. *a.*)

By the *St. of Marlb.* 6. If a Father enfeoff his Son, the Lord ſhall not loſe his Wardſhip. 2 *Inſt.* 109.

So, if the Grandfather, after the Death of the Father, enfeoff his Son, or any Deſcendant in a right Line. 2 *Cro.* 157.

Or, if the Father was alive, but dies in the Life of the Grandfather. 2 *Cro.* 157.

So, if there be a Term for Years to pay the Debts of the Father, and he grants the Reverſion to a Stranger. *R.* 2 *Cro.* 157.

Otherwiſe, if the Father ſurvive the Grandfather, for then he was not Heir. 2 *Cro.* 157.

(G. 3.) Remedy for theſe Incidents. *Vide Gardian*, (H. 1, &c.)

After the Death of the King's Tenant, who holds *in Capite* by Knight's Service or Socage, or who holds of a Biſhop by Knight's Service, when the Temporalties are in the King's Hands, *&c.* The Eſcheator *ex Officio*, or upon a Writ of *Diem clauſit extremum* within the Year, or upon a Writ of *Mandamus* afterwards, may inquire what Lands the Tenant had at his Death, and of what Value, who was his Heir, and of what Age. *F. N. B.* 252, 253. *Ley, Livery* 20.

An Inquiſition *ex Officio*, if it be uncertain, ſhall be void; if taken upon the writ of *Diem clauſit extremum*, and it is defective, there ſhall be a *Melius inquirendum*. *F. N. B.* 255.

If any Lands are omitted, there ſhall be a Writ of *Quæ Plura*. *F. N. B.* 255. *Ley, Livery* 20.

So the Heir upon the Death of his Anceſtor may ſue a ſpecial Commiſſion to inquire *ut ſupra*, which ſhall be of the ſame Effect as an Inquiſition upon a Writ of *Diem Clauſit extremum*. *F. N. B.* 253. *D.*

If the Eſcheator die, or be removed after the Writ of *Diem clauſit extremum* before Inquiſition taken, there ſhall be another Writ of the ſame Nature called, *Datum eſt nobis intelligi*. *F. N. B.* 253.

If after Inquiſition and before Return, it ſhall be tranſmitted by *Certiorari*. *F. N. B.* 253.

If the Heir be found by the Office, within Age, he ought to have an *Ætate Probanda* before Livery. *Ley, Livery* 21. *F. N. B.* 253, 254.

If

If he be of full Age, and ſo found, he may ſue Livery without the Writ of *Ætate Probanda*. *Ley, Livery* 20.

Otherwiſe, if found within Age, tho' in Truth he was of full Age. *Ley, Wards and Liveries* 27.

### (G. 4.) Who is compellable to be a Knight.

The King could compel a Man that had an Inheritance of 40*l. per Annum* to be a Knight, or that he ſhould be fined. 2 *Rol.* 167. *l.* 20, 45.

So every one, who had 20*l. per Annum*, or *integrum feodum Militis valens* 20*l. per Annum*. 2 *Rol.* 167. *l.* 50. 168. *l.* 7.

Tho' it was Land of Socage-Tenure. 2 *Rol.* 168. *l.* 35.

And if he would not be a Knight, the King could command the Sheriff to diſtrain for the Fine. 2 *Rol.* 167. *l.* 41, 46.

But by the *St.* 1 *Ed.* 2. 1. a Man, who had 20*l. per Annum* in *Antient Demeſne* as *Sokeman*, was not diſtrainable to be a Knight. 2 *Rol.* 168. *l.* 27.

And now, by the *St.* 16 *Car.* 1. 20. No Perſon ſhall be diſtrained, or compelled, *&c.* to take on him the Order of Knighthood, or ſuffer any Fine, Trouble, *&c.* And all Proceſs, *&c.* for that Intent ſhall be void.

### (H) Socage.

TENURE by *Socage* is, where a Man holds Lands by Fealty and Rent, or any other Service, not being Knight's Service, for all Manner of Services. *Lit. S.* 117.

Or, by Homage, Fealty, and Rent; for Homage by itſelf does not make Knight's Service. *Lit. S.* 117.

## HOMICIDE.

*Vide Appeal*, (A. 1.)—*Juſtices*, (M. 1, &c. 14, 18, &c. 20.)

## HOMINE REPLEGIANDO.

*Vide Impriſonment*, (L. 4.)

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## HONOUR.

### (A) Honour, What ſhall be.

AN Honour ought to conſiſt of Lands, Liberties, and Franchiſes. 1 *Bul.* 197. 2 *Rol.* 72. *l.* 48.

And it is the moſt noble Seigniory. *Co. L.* 108. *a.*

So one or more Manors may be Parcel of an Honour. 2 *Rol.* 72. *l.* 45. *Vide Grant*, (E. 4.)

So a Foreſt may be appendant to it. 2 *Rol.* 73. *l.* 3.

An Honour originally ſhall be created by the King. *Co. L.* 108. *a.*

Every Honour muſt be holden of the King. *R.* 1 *Bul.* 195.

And if it be aſſigned, or granted over to another, it ſhall not be holden of a Subject. *R.* 1 *Bul.* 195.

For it may be granted by the King to a Subject. *Co. L.* 108. *a.*

A Man may claim an Honour by Grant, or by Preſcription. *R.* 1 *Bul.* 195.

But the King at this Day cannot make an Honour by Grant, without an Act of Parliament. *R.* 1 *Bul.* 196. *Co. L.* 108. *a.*

There are within the Realm 80 Honours, *viz.* The Honour of *Aquila*, *Arundel*, *Abergavenny*, *Boloine*, *Berkhamſted*, *Beaulieu*, *Barnard's Caſtle*, *Bullingbroke*, *Barſtable*, *Bononia*, *Brecknock*, *Brember*, *Bedford*, *Clare*, *Crovecure*, *Clun*, *Chriſtchurch*, *Cockermouth*, *Cormayls*, *Candicut*, *Cariſbrook*, *Clifford-Caſtle*, *Cheſter*, *Carmarthen*, and *Cardigan*, *Dudley*, and *Dover-Caſtle*, *Eye*, and *Egremond*.

The Honour of *Eaſt* and *Weſt Greenwich*, *Gloceſter*, *Grentmeſnil*, *Gower*, *Haganet*, *Huntindon*, *Heveningham*, *Hawenden-Caſtle*, *Hertford*, and *Halton*, *Lancaſter*, *Lincoln*, *Leiceſter*, *Lovetot*, *Hinckley*, and *Kington*, and *Folkingham*.

The Honour of *Montgomery*, *Mowbray*, *Middleham*, and *Maidſtone*, *Nottingham*, *Newelhn*, *Oakhampton*, and *Oxford*.

Note the honour of Pontefract should be added.

The Honour of *Plimpton*, *Peverel*, *Pickering*, *Raleigh*, *Richard's Caſtle*, *Skipton*, *Stafford*, *Strigal*, *Tickhil*, *Tremanton*, *Totneſs*, *Theony*, *Tamworth*.

The Honour of *Wigmore*, *Wallingford*, *Windſor*, *Wormgay*, *Whirwelton*, *Werk*, *Whitchurch*, and *Warwick*, *Webley*, and *Tutbury*.*

* [By the *St.* 31 *H.* 8. 5. *Hampton Court*]

So, by the *St.* 33 *H.* 8. 37, 38. *Ampthill*, and *Grafton*.

By the *St.* 37 *H.* 8. 18. *Weſtminſter*, *Kingſton on Hull*, *S.t Oſyth*, and *Donnington Caſtle*.

*Vide Dignity.—Prærogative*, (D. 31.)

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# HOSPITAL.

## (A) Hoſpitals.

HOSPITALS are Aggregate, in which the Maſter, or Warden and his Brethren have the Eſtate of Inheritance; or Sole, in which the Maſter, *&c.* only has the Eſtate in him, and the Brethren, or Siſters, having College, and Common Seal in them, muſt conſent, or the Maſter alone has the Eſtate not having College, or Common Seal. *Co. L.* 342. *a.*

So Hoſpitals are Eligible, Donative, or Preſentative. *Co. L.* 342. *a.*

The Maſter of an Hoſpital, who has College, and Common Seal, may have a Writ of Right; for the Right, and Inheritance is in him. *Co. L.* 341. *b.*

If he has no College, or Common Seal, he may have a *Juris utrum*. *Co. L.* 342. *a.*

(B) What

## (B) What are diſſolved and given to the King.

BY the *St.* 27 *H.* 8. 28. The King ſhall have and enjoy to him and his Heirs for ever all Monaſteries, Priories, and other Religious Houſes, not having in Lands, *&c.* above the clear Yearly Value of 200*l.* and all Manors, Granges, Meaſes, *&c.* belonging to them; and alſo all Monaſteries, Abbeys, and Priories, which within one Year before were granted to him, or otherwiſe ſuppreſſed and diſſolved, and all Manors, *&c.* belonging to them.

By the *St.* 31 *H.* 8. 13. The King ſhall have and enjoy to him, his Heirs and Succeſſors all Monaſteries, *&c.* Hoſpitals, *&c.* and other Religious and Eccleſiaſtical Houſes before diſſolved, or given up, or thereafter to be diſſolved, or given up.

## (C) What not.

BUT no Lay Hoſpital was given to the King by theſe Statutes, but Religious and Eccleſiaſtical Hoſpitals only. *Co. L.* 342. *a.*

Tho' after Foundation, or when founded, it was ordained that a Prieſt ſhould be maintained to celebrate Divine Service, or to pray for the Soul of the Founder or others, and the Poor of the Hoſpital to join with him. *Co. L.* 342. *a.*

So, by the *St.* 37 *H.* 8. 4. No Hoſpital was given to the King, except where the Donor, *&c.* had expelled the Prieſts, Wardens, *&c.* between 4 *Feb.* 27 *H.* 8. and 25 *Dec.* 37 *H.* 8. or where King *H.* 8. by Commiſſion, *&c.* had ſeiſed it. *Co. L.* 342. *a.*

So, by the *St.* 1 *Ed.* 6. 14. No Hoſpital was given to the King, Lay, or Religious. *Co. L.* 342.

# HOSTLER, or INN-KEEPER.

*Vide Action upon the Caſe for Negligence*, (B. 1, &c.)—— *Pleader*, (2 Q.)

# HOTCH-POT.

*Vide Gardian*, (G. 2.)—*Parceners*, (C. 4.)

# HOUSE OF CORRECTION.

*Vide Juſtices of Peace*, (B. 82, 83.)—*Uſes*, (N. 6.)

# HOUSEHOLD OFFICERS.

*Vide Officer*, (F.)

# HUE AND CRY.

*Vide Hundred*, (C. 1, &c.)—*Pleader*, (2 S. 1, &c.)

# HUNDRED.

## (A) Hundred, To whom it belongs.

KING *Alfred* divided his Realm into Counties or Shires, and the County into Hundreds. *Ray.* 363.

Every Hundred originally was Parcel of the Poſſeſſions of the King, and belonged to the King. 1 *Vent.* 403. 2 *Rol.* 73. *B.* 11 *H.* 4. 89. *b.*

And the King had granted it to others in Fee, for Life, or in Farm. *Per Hale*, 1 *Vent.* 404. 2 *Rol.* 73. *l.* 32.

And when granted to a Subject, it is a Franchiſe, or Liberty. 4 *Mod.* 343. 1 *Vent.* 405.

So a Subject may have it by Grant, or Preſcription. 2 *Rol.* 73. *l.* 35. 11 *H.* 4. 89. *b.*

Or, by *Diſſeiſin.* 2 *Rol.* 73. *l.* 40.

Or, as appurtenant to his Manor. 2 *Rol.* 73. *l.* 50.

But by the *St.* 2 *Ed.* 3. 12. Hundreds and Wapentakes let to Ferm by K. *Ed.* 3. for Term of Life or otherwiſe, which were ſometimes annexed to the Ferms of the Counties, ſhall be adjoined again to the Counties, and from henceforth ſhall not be ſevered from them.

And by the *St.* 14 *Ed.* 3. 9. All Wapentakes and Hundreds, which be ſevered from the Counties, ſhall be rejoined to them, as before this Time hath been eſtabliſhed by another Statute; and that the Sheriffs hold the ſame in their own Hands, *&c.*

And therefore, ſince theſe Statutes, the Bailiwick of the Hundred belongs to the Sheriff. *R. Ray.* 364, 5.

And it cannot be ſevered from the County by a Grant of the King. 1 *Vent.* 411. *R. Skin.* 41. 2 *Jon.* 194.

*Vide Juſtices of Peace*, (B. 67.)

## (B) Hundred Court.

THE Hundred Court was derived out of the County Court, and is of the ſame Nature with the County Court, or Court Baron. 2 *Inſt.* 71. 4 *Inſt.* 267.

By the King's Grant 18 *H.* 3. where it was held from Fortnight to Fortnight, it ſhall be now held from 3 Weeks to 3 Weeks. *Brady's Appendix to Hiſt. of England N.°* 234.

*Vide County*, (C. 1, &c.)—*Diſmes*, (M. 5.)

## (C) Hue and Cry.

*See 3. Inst. 116. 2. Inst. 172. 2. Hal. Hist. P.C. 98.*

### (C. 1.) How made.

BY the *St. Wint.* 13 *Ed.* 1. 1. 2. *Crie ſerra fait en County, Hundred, &c. Et cheſcun Pais ſerra iſſint garde, que maintenant apres Robbery ou Felony fait, freſh Suit ſerra de Vill en Vill, et de Pais en Pais, &c.*

*Et Pais n' avera plus long temps que 40 Jours, deiſnque face gree de la Robbery, ou del Miſfait, ou reſpondra Corps des Miſfeaſors.*

By

By the *St.* 8 *Geo.* 2. 16. Every Conſtable, to whom Notice is given or left at his Houſe of a Robbery, *&c.* and every Conſtable of the Hundred, or Conſtable, *&c.* in any Town, Pariſh, *&c.* within the Hundred, on Notice from the Party robbed or otherwiſe, ſhall with all Expedition make Hue and Cry after the Felon, *&c.* on Pain of 5*l.* for Neglect, a Moiety to the King, a Moiety to him that ſues in 6 Months, to be recovered with full Coſts.

## (C. 2.) Action againſt the Hundred upon the *St. of Wint.* 13 *Ed.* 1.

(C. 2.) When it lies.

By Conſtruction upon the *St. Wint.* 13 *Ed.* 1. If the Country does not apprehend the Felons within 40 Days, an Action lies againſt the Inhabitants of the Hundred, where the Robbery was committed, for the Money or Goods whereof the Party was robbed.

If the Robbery was in the Diviſion of ſeveral Hundreds, the Action ſhall be againſt the Inhabitants of both Hundreds. *Vide St. Wint.* 2.

So, if the Robbery was in the Half Hundred of *W.* it may be againſt the Inhabitants *in Hundredo vocato, the Half Hundred of W.* for that is an Hundred of itſelf. 1 *Brownl.* 156.

Or, if it be againſt the Inhabitants *in dimid' Hundred' de W.* it will be well. *R.* 1 *Brownl.* 156.

If a Man be aſſaulted in the Hundred of *A.* and flies into the Hundred of *B.* and there is robbed, the Action ſhall be againſt the Hundred of *B.* alone. *R. Hutt.* 125.

But if he be ſeiſed by a Robber in the Hundred of *A.* and carried to the Hundred of *B.* and there robbed, it ſhall be againſt the Hundred of *A. Dict.* 1 *Sid.* 367. *R. cont.* for it ſhall be againſt the Hundred where he was robbed. *Sal.* 614.

An Action lies againſt the Hundred, tho' no Hue and Cry was levied; for that is the Part of the Hundred. *Adm. cont. Bend. pl.* 157. *Semb. acc.* 2 *Leo.* 82, 174. 7 *Co.* 6. *a.* 1 *And.* 159.

So it lies, if a Waggon be driven out of the Highway by Day, tho' it be not robbed till Night. 1 *Sid.* 263.

So, if a Robbery be after Sun-ſet, if the Robber can be known and diſtinguiſhed. 7 *Co.* 6. *a.* *R.* 1 *And.* 159. *Sti.* 233.

And it is not a Cauſe for a new Trial, that the Verdict was for the Plaintiff; when it is dubious, whether it was Day or Night. 1 *Sid.* 263.

So it lies, if the Robbery be upon the Dawning of the Day, when it is convenient for travelling. *R. Cro. El.* 270. *R.* 2 *Cro.* 106.

If Notice of the Robbery was given in another Hundred adjoining; for he being a Stranger does not know the Limits of the Hundred. *R. Noy* 155. *R.* 1 *And.* 159.

If he ſays, *that he was robbed*, to one who inquires, what is the Matter, it is ſufficient Notice. *R. Noy* 155.

Tho' he refuſes his Horſe for Purſuit of the Robbers. *R. Noy* 155. *Mar. pl.* 28.

Tho' the Notice was 5 Miles from the Place of the Robbery. *R. Mar. pl.* 28.

So an Action lies againſt the Hundred, tho' the Felony be not committed in the Highway. *R.* 1 *Mod.* 221. *Per Cur. cont. Sho.* 60.

(C. 3.) By whom.

The Action regularly ſhall be by the Owner of the Goods.

If a Servant be robbed, the Maſter may maintain the Action. *R. Cro. Car.* 38. *Adm.* 3 *Mod.* 287. *D. Lat.* 127. *Sti.* 156. 4 *Mod.* 305.

Or the Servant may maintain the Action, tho' robbed of the Money of another. *Adm.* 2 *Leo.* 82. *R.* 1 *Brownl.* 155. *R.* 4 *Mod.* 305. *Sal.* 613, 614.

So, if the Servant deliver Money of his Maſter to *A.* and the Servant and *A.* are both robbed together; the Servant may maintain the Action for the Whole. 3 *Mod.* 288, 289.

By the *St.* 8 *Geo.* 2. 16. Proceſs againſt the Hundred ſhall be ſerved only on the High Conſtable of the Hundred, who ſhall give publick Notice of it in ſome Market Town of the Hundred the next Market Day, or if no Market in the Hundred, in ſome Pariſh Church after Divine Service, and enter an Appearance, and defend the Suit for the Hundred.

(C. 4.) **When it does not lie.**

But an Action does not lie againſt the Hundred for a Robbery within an Houſe; for every one ought to defend his Houſe at his Peril. *R.* 7 *Co.* 6. *a.* *R. Cro. El.* 753. *R. Mo.* 620. *R.* 3 *Leo.* 262.

Tho' taken in the Highway, and afterwards carried into an Houſe, and there robbed. *Semb. Sal.* 615.

Nor, for a Robbery in the Night; for that is not convenient for travelling. *R.* 7 *Co.* 6. *a.* *Mo.* 620. 1 *Leo.* 57. 1 *And.* 159.

Nor, in the Morning *ante Lucem.* *R.* 7 *Co.* 6. *b.* *Sav.* 83. *Sti.* 233.

Tho' taken in the Day, and afterwards robbed in the Night. *Semb. Sal.* 615.

So, tho' it lies, without Notice of the Robbery by the Party to the Hundred ſince the *St. of Winton* 7 *Co.* 6. 2 *Leo.* 174;

Yet, by the *St.* 27 *El.* 13. The Action does not lie, unleſs the Party, with as much convenient Speed as may be, make known the Robbery to ſome near Town, Village, or Hamlet.

And he ought to give Notice as ſoon as he can. *R. Noy* 155.

Nor, by the *St.* 8 *Geo.* 2. 16. unleſs, with as much convenient Speed as may be, he give Notice to the Conſtable of the Hundred, or ſome Conſtable of Pariſh, *&c.* near the Place of Robbery, or leave Notice at his Dwelling-houſe in Writing, deſcribing the Felon, Time, and Place of the Robbery, and in 20 Days after the Robbery give Notice in the *London Gazette*, deſcribing the Felon, Time, and Place of Robbery, Goods and Effects of which he was robbed.

But it is ſufficient to give Notice to the next Town in the High Road, tho' a Town on the Side be nearer. *Noy* 52. 1 *And.* 158. 1 *Leo.* 57.

Tho' the Town to which Notice is given is out of the Hundred. *Noy* 52. 1 *And.* 159. 1 *Leo.* 57.

So, by the *St. of Wint.* the Country has 40 Days to anſwer for the Bodies of the Malefactors; and therefore it is bad, if the Original be teſte'd within 40 Days after the Robbery committed.

So, by the *St.* 27 *El.* 13. The Action does not lie againſt the Hundred, if it be not proſecuted within a Year after the Robbery committed.

And the Year ſhall be taken, incluſive of the Day of the Robbery. *R. per* 2 *J. Warb. cont. Hob.* 139. 2 *Rol.* 520. *l.* 47. *R.* 1 *Brownl.* 156. *Vide Temps*, (A.)

So it does not lie, if the Robbery be not in the Highway. *R. Sho.* 60. *R. cont.* 1 *Mod.* 221. *Vide Ante*, (C. 2.)

So, tho' upon the *St. of Wint.* the Action lay, if all the Robbers were not taken. *D.* 7 *Co.* 7. *a.* *R.* 1 *Sid.* 11. *Per* 2 *J. Dy.* 370. *a. in Margin*;

Yet, by the *St.* 27 *El.* 13. No Hundred ſhall be chargeable, if any of the Robbers be taken.

If any be taken before the Action commenced, tho' he be taken after the 40 Days after the Robbery. *Co. Ent.* 348, 349. The Pleading is, *hucuſque non ceperunt. Semb.* 1 *Sid.* 11.

So, if any be taken, tho' he be not taken upon the Hue and Cry, but in any other Part of the County. *Per Hale*, 1 *Vent.* 119.

If the Robber be charged with the Robbery in the Preſence of a Juſtice of Peace, it ſhall be a Taking, altho' no one lays his Hand upon him. *R.* 1 *Vent.* 118, 235. 2 *Keb.* 760. 2 *Lev.* 4.

So, if he be found in Gaol for another Offence, and is indicted for that Robbery.

But a taking upon Suſpicion, if he be acquitted, is not ſufficient. *Per Periam, Dy.* 370. *a. in Marg.*

So, by the *St.* 27 *El.* 13. No Hundred ſhall be charged, unleſs the Party make Oath within 20 Days before the Action brought, that he knows not the Robbers, or any of them, before ſome Juſtice of the Peace of the Hundred, or near it.

If the Action be diſcontinued, and a new one commenced, there ought to be ſuch Oath within 20 Days before the new Action. *R.* 1 *Sid.* 139. 1 *Keb.* 495.

And an Oath, *that he does not know the Robbers*, is not ſufficient, without ſaying, *or any of them. Semb. Noy* 21.

The Party robbed muſt make the Oath.

If the Action be by the Maſter, where his Servant was robbed, the Servant muſt ſwear, and not the Maſter. *R. Cro. El.* 142. 1 *Leo.* 323. *R. Cro. Car.* 38, 336. *Adm.* 3 *Mod.* 288. *Sal.* 613.

If the Maſter brings the Action upon a Robbery of 2 Servants, both muſt make Oath. 3 *Mod.* 288. *R. inter Aſhcomb and Hundred of Eltham B. R.* 2 *W. & M. Sho.* 94, 241.

If the Servant delivers Part of the Money to another who travels with him, and they are both robbed together, both muſt make Oath. *R. inter Aſhcomb and Hund. of Eltham.* 3 *Mod.* 288.

Tho' one be a Quaker, and refuſe the Oath. 3 *Mod.* 288. *Sal.* 613.

But if the Maſter brings an Action upon the Robbery of 2 Servants, and one only ſwears, he ſhall recover for ſo much as was in his Poſſeſſion. 3 *Mod.* 289. *Sal.* 613. *Carth.* 146.

If the Maſter delivers Part of his Money to his Servant, and they are robbed together, and the Maſter brings the Action, it is ſufficient if the Maſter alone ſwears; for the Money delivered to the Servant remains in the Poſſeſſion of the Maſter, if he be robbed in the Preſence of the Maſter. *R. inter Jones and Hundred of Rumley* 1658. 3 *Mod.* 288. *Sal.* 613. *Carth.* 146.

So, if the Servant delivers Part of the Money to *A.* and they are robbed together, and afterwards the Servant brings an Action for the Whole; it is ſufficient if the Servant alone makes Oath; for the Whole was in his Poſſeſſion. *Carth.* 146.

And if the Servant be robbed of Money in the Preſence of the Maſter, and the Maſter alone ſwears, and brings an Action, it it ſufficient, tho' the Servant knows ſome of the Robbers, and informs his Maſter of it. *R.* 3 *Mod.* 288. *Carth.* 146.

So an Action lies, tho' the Party after the Oath detect the Robbers. *R. Mar. pl.* 28.

So, if the Oath be taken by a Juſtice of Peace out of the County it is ſufficient; for it is a miniſterial Act. *R. Jon.* 239. *Cro. Car.* 211.

If a Juſtice of Peace refuſes an Examination, an Action upon the Caſe lies againſt him; for he is only miniſterial. *Semb.* 1 *Leo.* 323.

If

If the Oath be taken by a Juſtice of Peace within the County, altho' it be not within the Hundred, it is ſufficient. *R. Sal.* 614.

So, by the *St.* 8 *Geo.* 2. 16. No Action ſhall be brought, unleſs before Commencement the Party before the Chief Clerk, or Secondary, or Filazer of the County, or Clerk of the Pleas of the Court where the Action is brought, or Sheriff of the County, give Bond of 100*l.* Penalty with 2 Sureties to the High Conſtable of the Hundred, with Condition to pay Coſts if the Plaintiff be nonſuit, diſcontinue, have a Verdict or Judgment on Demurrer againſt him.

Which Bond ſhall be certified by ſuch Chief Clerk, *&c.* to the Chief Clerk or Secondary in *B. R.* or Filazer of the County in *C. B.* or to the Clerk of the Pleas or his Deputy in the *Exchequer*, before Proceſs ſhall iſſue in ſuch Suit.

None ſhall take for ſuch Bond more than 5*s.* beſides Stamp-Duties, nor more than 2*s.* 6*d.* for making ſuch Certificate, and 2*s.* 6*d.* for filing it; and the Chief Clerk, *&c.* upon Requeſt ſhall deliver it over to the High Conſtable *gratis*.

So, tho' it lies ſince the *St. of Winton*, tho' the Robbery was on a *Sunday*. *R.* 1 *Brownl.* 156. *Per* 3 *J. Mont. cont.* 2 *Rol.* 59. 2 *Cro.* 496;

Yet, by the *St.* 29 *Car.* 2. 7. If any, who ſhall travel on the Lord's Day, ſhall be then robbed, no Hundred ſhall be anſwerable for it, but the Perſon robbed ſhall be barred from bringing any Action for the ſaid Robbery.

But if a Man be robbed in going in his Coach to Church he ſhall have an Action againſt the Hundred; for that is not Travelling within the Intent of the *St.* 29 *Car.* 2. *R. in C. B.* (7 *Geo. inter Taſhmaker and Hundred of Edmonton. Comyns's Rep.* 345.)

As to the Proceeding, Declaration, Plea, *&c.* in an Action upon the *St. of Winton*, *Vide* in *Pleader*, (2 S. 1, &c.)

(C. 5.) How the Charge upon the Hundred ſhall be levied.

If there be Judgment againſt the Hundred, it may be levied againſt the Inhabitants of the ſame Hundred by *Fieri facias*.

So it may be levied upon any one, who has Lands in his Poſſeſſion within the Hundred, tho' he has no Houſe, nor Lodging there; for he is an Inhabitant. *R.* 2 *Sand.* 423.

Upon a Leſſee, or Purchaſer after the Robbery committed. *R. Noy* 155.

So it may be levied upon one or two of the Inhabitants.

But if a Man come to inhabit in an Hundred after a Robbery done, he ſhall not be charged. *R. Hutt.* 125. *Cont. per Barckley*, *Mar. pl.* 28.

So, if the whole Debt be levied upon one or 2 of the Hundred, by the *St.* 27 *El.* 13. on Complaint to 2 Juſtices of Peace of the County (*Quorum unus*) in or near the Hundred, they may aſſeſs rateably all the Towns, *&c.* within the ſame Hundred, or in the Liberties within the ſame, for the Relief of him againſt whom the Plaintiff took Execution; and the Conſtable of each Town, *&c.* may rateably aſſeſs the ſaid Sum on every Inhabitant, and if he refuſe to pay, levy it by Diſtreſs and Sale, *&c.*

And by the *ſame Statute*, The Hundred, where Default of Freſh Suit on Hue and Cry was made, ſhall anſwer half the Damages recovered againſt the Hundred in which the Robbery was committed, to be recovered by Debt, *&c.* at the Suit of the Clerk of the Peace.

By the *St.* 8 *Geo.* 2. 16. After Judgment againſt the Hundred, no Proceſs ſhall be ſerved on the High Conſtable or any Inhabitant, but the Sheriff on Receipt of the Writ of Execution ſhall ſhew it *gratis* to 2 Juſtices of the Peace in or near the Hundred, who ſhall ſpeedily cauſe an Aſſeſſment to be levied purſuant to the *St.* 27 *El.* 13. and alſo for the neceſſary Expences of

of the High Conſtable above the Coſts and Damages recovered, of which, on Notice from the 2 Juſtices, he ſhall give an Account and Proof on Oath to their Satisfaction, having firſt cauſed his Attorny's Bill to be taxed.

The Sheriff ſhall pay the Money levied to the Parties without Fee, and indorſe the Day of recieving the Writ of Execution, and not to be called upon for a Return till 60 Days after.

And the like Aſſeſſment ſhall be in Caſe the Plaintiff be Nonſuit, diſcontinue, or have a Verdict or Judgment on Demurrer againſt him, if by Inſolvency of the Plaintiff or his Sureties, he cannot be reimburſed on the Bond of 100*l.* Penalty; and the Money levied ſhall be paid to the Juſtices for the High Conſtable in 10 Days after it is levied.

And the Juſtices may limit a Time not exceeding 30 Days for levying ſuch Aſſeſſment; and the Officer appointed refuſing or neglecting to levy and pay the Money, *&c.* in ſuch Time forfeits double the Sum.

*

[* *Vide* the *St.* 30 *Geo.* 2. 3. *S.* 116, that no Receiver General of the Land Tax, or his Agents, can ſue the Hundred for a Robbery, unleſs the Perſons carrying the Money be 3 in Company.]

# HUNTING.

*Vide Chaſe*, (H. 1, &c.)—*Juſtices*, (S. 7.)—*Juſtices of Peace*, (B. 47, 49.)

# HUSBAND AND WIFE.

*Vide Baron and Feme.—Chancery*, (2 M. 1, &c.)

# HUSTINGS.

*Vide Courts*, (O. 1.)

# IDEMPTITATE NOMINIS.

## (A) When it lies.

THE Writ of *Idemptitate Nominis* lies, when a Man is taken or moleſted by Proceſs againſt another of the ſame Name. *F. N. B.* 268.

And it ſhall be directed to the Eſcheator, or to the Sheriff, if a Man or his Goods are taken by Proceſs againſt another directed to them. *F. N. B.* 268.

If he be taken by Proceſs againſt an Accomptant out of the *Exchequer*, it ſhall be directed to the Treaſurer and Barons of the *Exchequer*. *F. N. B.* 268. *A.*

If by Proceſs after Outlawry in *B. R.* or *C. B.* it ſhall be directed to the Juſtices of the ſame Court. *F. N. B.* 268. *B.*

So, it ſhall be directed to the Juſtices of Gaol-Delivery, or of the Peace, if he be moleſted by Proceſs upon Indictment before them. *F. N. B.* 268. *C.*

So it lies after Judgment and Execution ſued. *R.* 2 *Cro.* 623. *Semb. cont. Hob.* 330.

This Writ directed to the Juſtices ſeems to be only a Commiſſion to them to make Inquiry of the Truth, upon which they award a Writ of Inquiry to the Sheriff. *F. N. B.* 268. *B.*

And thereupon, the Attorny General may plead, *quod eſt eadem Perſona*; which ſhall be tried by a Jury, and Judgment according to the Verdict. *Hob.* 330.

But a Man taken by a *Capias Utlagatum* may come into *C. B.* and pray a Writ of Inquiry whether he be the ſame Perſon, without ſuing an *Idemptitate Nominis*. *F. N. B.* 268. *B.*

So upon an Exigent a Man of the ſame Name may offer himſelf to anſwer; and if the Plaintiff ſays, that he is not the ſame Perſon, he ſhall put the Difference of the Names, and according to ſuch Difference, the Exigent ſhall be awarded. *F. N. B.* 268. *B.*

But where a Man appears by *Superſedeas* upon an Exigent returned outlawed, the Plaintiff cannot ſay, that he is not the ſame Perſon, and ſo defeat the Outlawry, without a Writ of *Idemptitate Nominis*. *F. N. B.* 268. *B.*

So upon an Exigent on an Indictment a Man cannot ſay, that he is of the ſame Name, and pray that the Attorny General may put a Difference of Names, for it would be changing the Indictment; but the Party if he be aggrieved muſt have an *Idemptitate Nominis*. *F. N. B.* 268. *C.*

# I D E O T.

## (A) Ideot, Who ſhall be.

PERSONS who are *Non compotes Mentis* are Ideots, or of Non ſane Memory.

Ideots are *Fatui naturales*, which were of Non ſane Memory *â Nativitate. Co. L.* 247. *a. Staundford's Præ. R.* 34. *b.*

And it is ſufficient to find him ſo, if he has not any Uſe of Reaſon: As, if he cannot count 20*d. F. N. B.* 233. *B.*

Has no Underſtanding to tell his Age; who is his Father or Mother, *&c. F. N. B.* 233. *B.*

What will be for his Profit or Loſs. *F. N. B.* 233. *B.*

But a Man ſhall not be called an Ideot, if he has the Underſtanding to learn, or knows Letters. *F. N. B.* 233. *B.*

To read by the Inſtruction, or Information of another. *F. N. B.* 233. *B.*

## (B) Lunatick, &c.

SO, if any Perſon be by Sickneſs or other Accident deprived of the Uſe of his Reaſon, he ſhall be eſteemed *Non compos Mentis. Co. L.* 247. *a.*

Tho' he be a Lunatick, and have lucid Intervals. *Co. L.* 247. *a.*

## (C) The King ſhall have the Cuſtody of them.

### What Intereſt the King has.

THE King, of Right, has the Protection and Defence of all his Subjects, their Lands, and Goods. *F. N. B.* 232. *A.*

And therefore, by the *St. Prærog. Reg.* 17 *Ed.* 2. 9. *Rex habebit Cuſtodiam terrarum Fatuorum naturalium, capiendo exitus earum ſine Vaſto, & inveniet eis neceſſaria, de cujuſcunque feodo, & poſt Mortem eorum reddet hæredibus, ita quod nullatenus per eoſdem fatuos alienentur, &c.*

And by the ſame *St.* 17 *Ed.* 2. 10. *Rex providebit, ſi quis, qui prius habuit intellectum, fuerit non compos Mentis, ut quidam ſunt per lucida intervalla, quod terræ cuſtodiantur ſine vaſto, & ipſe & familia inde ſuſtineantur competenter, & reſiduum cuſtodiatur ad opus ipſorum, ita quod prædictæ terræ infra prædictum tempus nullatenus alienentur, nec Rex aliquid de exitibus recipiat ad opus ſuum.*

This Prærogative ſeems to have commenced *tempore Ed.* 1. *St. Præ. R.* 33. *b.*

And therefore, the King himſelf ſhall have the Cuſtody of an Ideot, his Lands, and Goods. 4 *Co.* 126.

And ſhall have them during the Life of the Ideot. *St. Præ. R.* 34. *a.* 4 *Co.* 126. *a. Dy.* 26. *in Marg.*

The King may take the Profits of an Ideot's Eſtate to his Uſe, allowing Neceſſaries to him and his Family. *St. Præ. R.* 35. *a. Mo.* 4. *Dy.* 26. *a.*

So he may demiſe his Lands, rendring Rent. *St. Præ. R.* 35. *a.*

So the King may grant the Cuſtody of an Ideot, his Lands, and Goods to another. 2 *Ca. Ch.* 70. 1 *And.* 23.

So he may grant them to another, without Security to account. 3 *Mod.* 43.

And ſuch Grant extends to the Executor or Adminiſtrator of the Grantee. 3 *Mod.* 44. *Skin.* 139, 177.

So he may commit the Care of a *Non compos* to another, ſo that his Family be maintained, and nothing waſted. 4 *Co.* 127. *b.*

But the King is not ſeiſed of the Lands of an Ideot; for he remains ſeiſed of the Freehold. 4 *Co.* 126. *a.* *St. Præ. R.* 35. *b.*

So the King out of the Profits muſt allow Neceſſaries for him and his Family. *St. Præ. R.* 35. *a.*

Muſt make Reparations. *St. Præ. R.* 35. *a.*

So a Grant of the Cuſtody to another and his Executors, will not be good to the Executor. *Q.* 2 *Ca. Ch.* 70. 1 *Ver.* 9, 137. *Skin.* 4.

So the King ſhall not have a Copyhold, which belongs to an Ideot. 4 *Co.* 126. *b.*

Nor a Right, or Title of Entry, or Action. *St. Præ. R.* 35. *b.*

So, after the Death of an Ideot, the King upon an *Ouſter-le-mains* ſhall reſtore the Land to the Heir. *St. Præ. R.* 35. *a.*

So the King has no Intereſt in the Perſon of a Lunatick, *&c.* as of an Ideot. 4 *Co.* 127. *a.*

Nor can he grant the Cuſtody of him and his Lands, to the Uſe of the Grantee. 4 *Co.* 127. *b.* *R. Mo.* 4. 1 *And.* 23. *Bend.* 17. *Dy.* 25. *b.*

Or, without Security to account to him, if he becomes *Compos*; otherwiſe, to his Executor or Adminiſtrator. 3 *Mod.* 43. *Q. Dy.* 26. *a.*

Yet he ſhall preſent to a Church for a Lunatick. *Win. Ent.* 629. (663.)

How a Commiſſion for an Ideot, Lunatick, *&c.* ſhall be granted, *Vide* in *Chancery*, (3 Q.)

If the King be informed, that ſuch an one is an Ideot, or Non ſane, he may bring him before his Chancellor to be examined, and afterwards an Inquiſition may be awarded to inquire, whether he be an Ideot, Non ſane, *&c.* *St. Præ. Reg.* 34.

Before the Chancellor, or any other whom the King ſhall appoint. *St. Præ. R.* 34. *b.*

So the King may award a Writ to the Eſcheator or Sheriff, *quod in propriâ Perſonâ ad ipſum accedat & ipſum viis & modis, &c. examinet, & nihilominus per Sacramentum, &c. inquiret ſi Idiota ſit, necne; & ſi ſit, utrum à Nativitate, aut ab alio & quo tempore, & ſi lucidis gaudeat intervallis, &c.* *F. N. B.* 233.

And if he be found an Ideot by Office, and die; the King may afterwards ſeiſe his Lands; for he muſt reſtore them to his Heir. *St. Præ. R.* 35. *b.*

So, if he be found an Ideot for 8 Years, theſe Words, 8 *Years*, ſhall be rejected; for finding, that he is an Ideot, generally, is ſufficient, and the Addition will be Surpluſage. *R.* 3 *Mod.* 43.

If he be found an Ideot and that he aliened, without ſaying, how, or for what Eſtate, it is ſufficient to give the Cuſtody of him, and all his Lands to the King. *R. Ley* 25.

But before Office the King cannot ſeiſe the Lands of an Ideot, or Non ſane Perſon. 4 *Co.* 127. *a.*

And no Office can be found after his Death. 4 *Co.* 127. *a.*

So a Man, who takes upon him the Care of a Lunatick, *&c.* of his own Head, ſhall be accountable as Bailiff to him, his Executors, or Adminiſtrators. 4 *Co.* 127. *b.* *Vide Accompt*, (A. 3.)

And if he inveſts the Perſonal Eſtate of the Lunatick in the Purchaſe of Land, it ſhall be diſtributed as Perſonal Eſtate, and not go to the Heir. *R.* 2 *Ver.* 192.

But if a Man be found an Ideot, &c. or Non ſane, by Inquiſition and Examination before the Eſcheator, or Sheriff, he may in Perſon, or by his Friends, come before the Chancellor and King's Council, and pray to be examined there. *F. N. B.* 233. *St. Præ. R.* 36. *a.*

And he may have a Writ to bring him before the King's Council. *F. N. B.* 233. *St. Præ. R.* 36. *a.*

And if he be found no Ideot, the firſt Inquiſition before the Sheriff, &c. though it be returned, ſhall be void, without a Traverſe. *F. N. B.* 233. *St. Præ. R.* 36. *a.* *See Forrest. 143.*

## (D) Acts by a Non compos.

### (D. 1.) What are void.

ALL Acts, which an Ideot, or *Non compos* can do, concern his Life, his Lands, or his Goods. 4 *Co.* 124. *a.*

By the Civil Law, all Acts of a *Non compos* are void, without the Aſſent of his Tutor. 4 *Co.* 125. *b.*

By the Common Law, every Diſpoſition by Will by a *Non compos* is void. *Vide Deviſe*, (H. 1.)

So a Deed by a *Non compos* is void. *Ca. Parl.* 154.

As, if a *Non compos* execute a Surrender of his Eſtate for Life, it will be void. *R. Ca. Parl.* 153. *R. in B. R. and afterwards affirmed in Parliament.* 3 *Mod.* 310. *Sal.* 427. *Comb.* 438, 468.

So a Grant of a Rent-charge by a *Non compos* will be void. *Ca. Parl.* 153.

So, if a *Non compos* make a Feoffment by Letter of Attorny, it will be void, as to all except himſelf. 4 *Co.* 125. *a.*

Altho' it be reaſonable, and for the Benefit of his Family. 2 *Ver.* 414.

### (D. 2.) What only voidable.

But a Feoffment by a *Non Compos* in Perſon is only voidable. 4 *Co.* 125. *a.*

### (D. 3.) What he may do, if he becomes Sane.

If a Lunatick becomes of Sane Memory, he may afterwards make a Feoffment, &c.

But if found a Lunatick by Commiſſion, the *Chancery* will direct, that in order to make a Settlement he ſhall levy a Fine in *C. B.* and it ſhall be tried upon Iſſue there, whether he be *Compos*. 1 *Ver.* 155.

*Vide Chancery*, (3 Q.)

### (D. 4.) How avoided.

If an Ideot make a Feoffment or other Conveyance of his Lands and Tenements, after Office found, the King ſhall avoid them. *St. Præ. R.* 34. *b.* 35. *b.* 4 *Co.* 127. *a.* (D. 4.) By the King upon Office.

So if a Lunatick, or other *Non Compos*, make a Feoffment, &c. upon Office found it ſhall be avoided. 4 *Co.* 127. *a.* 1 *Ca. Ch.* 113.

And upon Office it ſhall be avoided, as to the Ideot, or *Non Compos* himelf. *Co. L.* 247. *a.*

For after Office upon a *Scire facias* againſt the Alienee, the Land ſhall be ſeiſed into the King's Hands. 4 *Co.* 126. *b.*

And by ſuch Seiſure the Freehold is reveſted in the *Non Compos*. 4 *Co.* 126. *b.*

Or it may be avoided upon an Information by the Attorny General, as well as by *Scire facias*. 1 *Ca. Ch.* 113, 153.

So, by Office, his Grant of a Copyhold ſhall be avoided, tho' it cannot be ſeiſed by the King. 4 *Co.* 126. *b.*

So, after Office, all Gifts by him of his Goods are avoided. 4 *Co.* 126. *b.*

And all Bonds. 4 *Co.* 126. *b.*

Or other Deeds. 4 *Co.* 126. *b.*

And if he be afterwards ſued upon ſuch a Bond or Deed, ſo long as the Office is in Force, a *Superſedeas* reciting the Office may be ſent to the Juſtices. 4 *Co.* 126. *b.*

An Office found as to an Ideot relates to his Nativity, and avoids all Acts from that Time. 4 *Co.* 126. *b.*

As to a Lunatick, *&c.* it relates to the Time, when he is found to be *Non Compos*. 1 *Ca. Ch.* 113.

Yet where the Office has a Retroſpect, a Purchaſer ſhall be allowed to traverſe. *R.* 1 *Ca. Ch.* 113.

(D. 5.) By the Heir.

So, if there be an Alienation by a *Non Compos* in Fee, in Tail, for Life, or Years, his Heir may avoid it by Entry, if his Entry be *congeable*. *F. N. B.* 202. *F.*

Or, if it be not *congeable*, by a Writ of *Dum non fuit Compos Mentis*. *F. N. B.* 202. *F.* *Vide Dum fuit infra Ætatem*, (B.)

The Proceſs in a *Dum non fuit Compos Mentis* is the ſame as in a *Præcipe quod reddat*; *viz.* Summons, *Grand Cape*, and *Petit Cape*. *F. N. B.* 203. *D.*

So the Heir may avoid the Alienation of his Anceſtor being *Non Compos*, by Plea, as well as by Entry, and Writ of *Dum non fuit Compos*. *Co. L.* 247. *b.*

## (D. 6.) When they ſhall not be avoided.

But an Ideot, or Perſon None ſane, cannot himſelf have a *Dum non fuit Compos*; for he cannot ſtultify himſelf. *Cont. F. N. B.* 202. *C. D.* *R. acc.* 4 *Co.* 123. *b.* *Semb. Cont. Ca. Parl.* 153.

And therefore, a Feoffment, Releaſe, or Grant, cannot be avoided by a *Non Compos* himſelf; for he cannot by Plea diſable himſelf. *R.* 4 *Co.* 123. *b.* *Co. L.* 247. *a. b.*

Tho' the Feoffment, was by Attorny. 4 *Co.* 125. *a.*

So, to a Bond by himſelf, he cannot plead, *quod non fuit Compos*. *R.* 4 *Co.* 123. *b.* *R. Cro. El.* 398.

So a *Non Compos* ſhall not be aided by a Court of Equity, againſt an Alienation which he himſelf cannot avoid by Law. *R.* 4 *Co.* 124. *a.*

So a Feoffment, *&c.* by a *Non Compos* ſhall never be avoided by a Privy in Eſtate, or Tenure: And therefore, if a *Non Compos* make a Feoffment, and die without Heir, the Lord by Eſcheat ſhall not avoid it. 4 *Co.* 124. *a.*

So, if a Donee in Tail make a Feoffment, and die without Iſſue, it ſhall not be avoided by him in Reverſion, or Remainder. 4 *Co.* 124. *a.*

So, by the *St.* 4 *Geo.* 2. 10. Ideot, Lunatick, or *Non Compos*, being a Truſtee or Mortgagee may, or his Committee in his Name by Direction of Lord Chancellor, *&c.* on Petition may convey Lands, *&c.* as directed.

So, if a *Non Compos* alien by Matter of Record, it ſhall never be avoided by him or his Heirs: As, if he levy a Fine, or ſuffer a Recovery. 4 *Co.* 124. *a.* *Co. L.* 247. *a.*

So every Act, which he does in a Court of Record, binds him, and all other Perſons for ever. 4 *Co.* 124. *a.*

As, a Judgment, Statute, Recognizance, *&c.* 4 *Co.* 124. *a.* 125. *a.*

## (D. 7.) What Acts he may do.

So a *Non Compos* may maintain, or defend an Action. *Poph.* 141.

If an Ideot ſue, he muſt appear in Perſon, and any one who prays to be admitted as his Friend may ſue for him. *Semb.* 2 *Sand.* 335.

So, if an Action be againſt an Ideot, he muſt appear in his proper Perſon, and any one who can make a better Defence ſhall be admitted to defend for him. *St. Præ. R.* 36. 4 *Co.* 124. *b.*

But another *Non Compos* muſt appear by Guardian, if he be within Age, and by Attorny, if he be of full Age. 4 *Co.* 124. *b.*

And if an Action be by the Committee of a Lunatick and not by himſelf, it will be bad. *R.* 1 *Brownl.* 197. *Poph.* 141.

So a *Non Compos* ſhall not be puniſhed for Murder, or Felony. 4 *Co.* 124.

But a *Non Compos* ſhall be puniſhed for High Treaſon. 4 *Co.* 124. *b.*

So the Laches of a *Non Compos* prejudices him as to a Title of Entry: As, if a *Non Compos* be diſſeiſed, and the Diſſeiſor die ſeiſed, *&c.* the Deſcent tolls his Entry. 4 *Co.* 125. *b.*

But Laches in a *Non Compos* does not bar him of his Right: As, if the Diſſeiſor levy a Fine, Non-claim for a Year and a Day at the Common Law does not bar him. 4 *Co.* 125.

So the Heir ſhall not be barred of his Entry by the Laches of a *Non Compos*, tho' he himſelf be. 4 *Co.* 125. *b.*

*Vide Capacity*, (D. 5.)

# J E O F A I L E.

*Vide Amendment, per Totum.—Pleader*, (E. 39.)

# J E R S E Y. (Iſle of,)

*Vide Navigation*, (F. 3.)

# J E T S A N.

*Vide Wreck*, (A.)

# I M P A R L A N C E.

*Vide Abatement*, (I. 19, 20.)—*Information*, (D. 5.)—*Pleader*, (D. 1, &c.)

# I M P E A C H M E N T.

*Vide Parliament*, (L. 18, &c.)

IMPLI-

# IMPLICATION.

*Vide Deviſe*, (N. 12, 13.)

# IMPORTATION.

*Vide Trade*, (A. 4.—C. 2.)

# IMPOSITIONS.

*Vide Prærogative*, (D. 48.)

# IMPRESSION.

*Vide Money*, (B. 3.)

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# IMPRISONMENT.

## (A) What ſhall be a Priſon.

ALL Priſons are the King's Priſons. 2 *Inſt.* 100, 589.

And a Subject ſhall not have a Priſon of his own. 2 *Inſt.* 100.

By the *St. Mert.* 20 *H.* 3. 11. *Magnates petierunt propriam Priſonam de illis quos caperent in Parcis & Vivariis ſuis, Quod Rex contradixit.* 2 *Inſt.* 100.

And therefore, where the Lord of a Franchiſe has the Cuſtody of a Priſon, it is the King's Priſon. 2 *Inſt.* 589.

And none can claim the Cuſtody of a Priſon as a Franchiſe, unleſs he has alſo Gaol-Delivery. 1 *Sal.* 343.

A Priſon cannot be newly erected, except by Act of Parliament. 2 *Inſt.* 705.

By the *St.* 23 *H.* 8. 2. Juſtices of Peace in *Eſſex*, *&c.* may within a Year erect a new Gaol in their County, and aſſeſs for it, *&c.*

And by the *St.* 5 *El.* 24. they may do it within 10 Years afterwards:

And by the *St.* 13 *El.* 25. within 10 Years after the former 10 Years.

By the *St.* 11 & 12 *W.* 3. 19. Juſtices upon Preſentment of Grand Jury at Aſſiſes may build or repair Gaols in their County as the Quarter-ſeſſions think fit, and aſſeſs in equal Proportion, *&c.* for 10 Years. Which was continued by the *St.* 10 *Ann* 14. for 7 Years; and by the *St.* 6 *Geo.* 19. made perpetual.

(B) Common

## (B) Common Gaol.

A Commitment upon a Conviction before Juſtices of *Oyer and Terminer to the Gaol*, without ſaying, *to the Sheriff*, is bad. *R.* 1 *Sal.* 348.

So a Commitment by a Court in *London* ought regularly to be to the Sheriff. *R.* 1 *Sal.* 349.

But a Commitment by another till he be carried to the Gaol, is well: As, a Commitment to a Meſſenger by the Secretary; for it ſhall be intended to be for ſuch Purpoſe. *R.* 1 *Sal.* 347.

So, if a Commitment be not to the Common Gaol, the Warrant is not therefore void. 1 *Sal.* 347.

And by the *St.* 6 *Geo.* 19. Juſtices of Peace may commit Vagrants and Criminals for ſmall Offences to the Common Gaol, or Houſe of Correction.

## (C) Marſhalſea Priſon.

THE Priſon of the Marſhalſea ſhall be within ſuch Limits as *B. R.* by Rule appoints. 1 *Rol.* 810. *l.* 50.

And *B. R.* by Rule may appoint it in any Place in *England*. *R.* 1 *Rol.* 810. *l.* 50. *Cro. Car.* 210, 466.

By the *St.* 19 *H.* 7. 10. The Sheriff of *Surry*, or any other Sheriff, ſhall not have the Cuſtody of the Gaols of King's Bench, or Marſhalſea, or either of them, but the Patentees of the Crown.

But the Marſhal cannot for any Neceſſity, as by Reaſon of a Plague, *&c.* keep his Priſoners in any but the antient Place, without a Rule of Court. 1 *Rol.* 810. *l.* 45. *Cro. Car.* 466.

And if a new Place be appointed by the Court, he muſt keep them there ſafely. 1 *Rol.* 810. *l.* 50.

A Leaſe of the Office of Marſhal to *A. for Years if he ſo long live*, will be good. *Mod. Ca.* 57. *

* [By the *St.* 8 & 9 *W.* 3. 26. It is ſufficient to detain Priſoners in the Priſon of the King's Bench, or Rules of the ſame.]

## (D) Fleet.

THE Priſon of the Fleet is proper for the *Chancery*, *C. B.* and *Exchequer*.

The Limits of the Priſon are the Walls; for Houſes within the Liberty of the Fleet are no Part of the Priſon. *R.* 2 *Mod.* 221.

*Vide Chancery*, (B. 8.)

But by the *St.* 8 & 9 *W.* 3. 26. it is ſufficient to detain Priſoners in the Fleet, or Rules of the ſame.

But the Warden by Licence of *C. B.* may keep his Priſoners in any other Place aſſigned by the Court. *Cro. Car.* 466.

So *B. R.* may charge a Priſoner, in Execution there for the King's Debt, with Execution upon a Judgment againſt him for the Debt of a Subject. *Dub. Dy.* 297.

## (E) Newgate.

BY Charter 1 *H.* 4. the Citizens of *London* ſhall have the Cuſtody of Newgate.

But the Court cannot take Notice, that the Keeper of Newgate is an Officer of *London*. *R.* 1 *Sal.* 349.

## (F) Gaoler, Who ſhall be.

THE King may make a Subject Keeper of a Priſon. 2 *Inſt.* 100.

And therefore, where the King grants to a Corporation a Gaol within their Precinct, the Mayor, *&c.* is Gaoler.

So the Sheriff has the Cuſtody of the County Gaol.

And cannot farm his Gaol.

So, if he gives the Gaol to a Servant, who ſells it, and gives the Money to the Sheriff. *R. Mo.* 781.

By the *St.* 14 *Ed.* 3. 10. All Gaols ſhall be rejoined to the Bailiwick of the Sheriff, who ſhall have the Cuſtody of the ſame; and put in ſuch Keepers for whom he will anſwer.

And by the *St.* 19 *H.* 7. 10. The Sheriff ſhall have Cuſtody of all Common Gaols, Priſons, and Priſoners in his County, except ſuch of which any Perſon Spiritual, or Temporal, or Corporation hath the Inheritance; and all Patents for future Grants of the ſame for Life, or Years, ſhall be void.

## (G) Impriſonment, What ſhall be.

EVERY Reſtraint of the Liberty of a Free Man will be an Impriſonment. 2 *Inſt.* 482. *Cro. Car.* 210.

Tho' it be in the high Street or elſewhere, and he be not put into any Priſon, or Houſe. *Per Thorpe, Fitzh. Bar.* 301.

## (H) What is a Cauſe for Impriſonment.

### (H. 1.) Lawful Proceſs.

(H. 1.) Proceſs founded upon a Record.

A Man may be impriſoned upon any lawful Proceſs.

As, upon a Proceſs founded upon Matter of Record: As, upon an Indictment, or Preſentment.

Or, upon a Plaint, or Original filed, or Judgment given.

(H. 2.) Founded upon a Suggeſtion.

So a Man may be impriſoned upon the King's Writ founded upon a Suggeſtion; for that is a lawful Proceſs. 2 *Inſt.* 53.

As, upon a Writ to the Sheriff *ad Capiendum impugnatores Juris Regni & eos ducendum ad Gaolam.* 2 *Inſt.* 53. *Reg.* 64.

Or, a Writ to take up a Soldier who has received his Preſt-money *ad proficiſcendum in Obſequium Regis.* 2 *Inſt.* 53. *Reg.* 24, 191.

Or, a Writ *de Apoſtata capiendo* againſt a Man profeſſed, who departs from his Abby. 2 *Inſt.* 53, 54.

So, upon a Writ *de Leproſo amovendo, Ne exeat Regnum.* 2 *Inſt.* 54. *Vide Leproſy.*

So, upon a Writ *de vi Laicâ amovendâ.* 2 *Inſt.* 54.

(H. 3.) Proceſs out of a lawful Court.

So, upon a Proceſs out of any Court allowed by Law, tho' it does not proceed according to the Common Law; for their Law allowed in this Realm is Part of the Law of *England.* 2 *Inſt.* 51.

As, Proceſs out of the Admiralty, according to the Marine Law, for an Offence upon the High Sea. 2 *Inſt.* 51.

Or, Proceſs out of the Court of the Conſtable and Marſhal, according to the Civil Law. 2 *Inſt.* 51.

(H. 4.) Autho-

## (H. 4.) Authority of Law.

(H. 4.) What ſhall be ſufficient.

So a Man may be impriſoned by Warrant of Law, for that is a lawful Proceſs: As, by a Conſtable *ex Officio*, who upon Complaint of a Felony may commit the Offender to an Houſe, Gaol, or Stocks till he can be brought before a Juſtice of Peace. *H. P. C.* 92. *Vide Leet*, (K.)

By any in Aid of an Officer, who has a lawful Authority. 2 *Rol.* 561. *l.* 5, 15. *H. P. C.* 90.

By a Sheriff for an Inſult upon him in the Street. *R.* 2 *Bul.* 330.

By the Watch, if the Perſon be a Nightwalker. 2 *Inſt.* 52.

So, if a Felony be committed, the Offender may be apprehended by any private Perſon. *H. P. C.* 89.

So, if a grievous Wound be given, tho' Death does not follow. 2 *Inſt.* 52. *H. P. C.* 90.

Or, if Hue and Cry be levied againſt him. 2 *Inſt.* 52. 2 *Rol.* 559. *l.* 20. *H. P. C.* 90, 91.

So, if Treaſon or Felony be committed, a Perſon probably ſuſpected may be apprehended, tho' he be not Guilty. 2 *Inſt* 52. *H. P. C.* 91.

As, a Perſon in Company with Felons. 2 *Inſt.* 52. *H. P. C.* 91.

Or, who has the Goods in his Cuſtody. *H. P. C.* 91.

Or, flies; or abſconds. 2 *Inſt.* 52. *H. P. C.* 92, 93.

Or, is accuſed by Common Fame. 2 *Inſt.* 52. *H. P. C.* 91.

Or, is a Vagrant. *H. P. C.* 21.

And upon ſuch Suſpicion, a Man may enter an Houſe if the Door be open. *H. P. C.* 91.

But he cannot break open the Door. *H. P. C.* 91.

So a Man may apprehend another for Prevention of an apparent Miſchief: As, to reſtrain a Madman, Combatant. 2 *Rol.* 559. *E.*

So he may ſeiſe his Villein, Ward, *&c.*

The youngeſt Brother, where the Eldeſt is out of the Realm, and ſuſpected not to be alive. 2 *Rol.* 560. *l.* 10.

(H. 5.) What not.

But the Law gives no Authority to apprehend any one upon the Command of the King, tho' it be in the King's Preſence. 2 *Inſt.* 186, 7.

Or, upon a Commiſſion under the Great Seal, tho' he be a Felon, *&c.* 2 *Inſt.* 54.

Or, by Force of a By-Law. 2 *Inſt.* 54. 5 *Co.* 64. *Vide By-Law*, (E. 1.)

Or, for Contemptuous Words of a Magiſtrate, not exerciſing his Office. *R. Mo.* 247. *Cro. El.* 78.

Tho' he alledges a Preſcription for doing it. *R.* 2 *Leo.* 34. *Cro. El.* 689.

So the Law gives no Authority to a Juſtice of Peace to detain a Perſon ſuſpected, but for a reaſonable Time till he may be examined.

As, if he be detained above 3 Days in the Juſtice's Houſe and then ſent to another, or diſmiſſed without Examination. *R. Cro. El.* 829.

So a Cuſtom, that he ſhall be impriſoned for not paying a Duty, is not good. 3 *Keb.* 365.

So a Man ſhall not be arreſted upon a Proceſs, when he attends a Court of Law, *nec eundo, aut redeundo*: As, if a Man attend to give his Anſwer to a Bill in *Chancery*. 1 *Ch. R.* 92.

If he attend the Quarter-Seſſions of the Peace, and be arreſted in the Face of the Court. *R.* 1 *Brownl.* 15.

Or, going or coming back. *Cont.* 1 *Brownl.* 15. *Semb. acc.* 1 *Lev.* 159.

But a Writ of Privilege from the *Cuſtos Rotulorum* does not excuſe. *Ray.* 100.

## (H. 6.) Lawful Warrant.

So a Man may be impriſoned by a lawful Warrant from any, who has a lawful Authority. 2 *Inſt.* 52.

As, by a Warrant from the Sheriff to his Bailiff upon Proceſs to him.

By Warrant of a Juſtice of Peace upon Complaint or Proof of an Offence within his Commiſſion. *H. P. C.* 93.

Altho' he who complains does not know, but ſuſpects *A.* to be the Offender, if he be preſent upon the Arreſt of *A.* *H. P. C.* 93, 4.

Altho' no Indictment be found for the Offence. *Mod. Ca.* 179.

But a Perſon arreſted ought to be examined before his Commitment.

What ſhall be an Arreſt, *Vide* in *Execution*, (C. 12.)—What a good Warrant for the Security of the Peace, *Vide Forceable Entry*, (D. 18.)

(H. 7.) What ſhall be a lawful Warrant.

A lawful Warrant muſt be made under Hand and Seal. 2 *Inſt.* 52. *H. P. C.* 94.

Muſt contain the Cauſe of the Commitment. 2 *Inſt.* 52, 591. *H. P. C.* 94. 2 *Inſt.* 591. *R. in Parl.* 3 *Car. Ruſhw.* 513. *R.* 1 *Sal.* 347.

Muſt have an apt Concluſion, *viz. until delivered by Law.* 2 *Inſt.* 52. *H. P. C.* 94.

Or, *until further Order*; for that imports by Order of Law. *R.* 1 *Lev.* 230. *Cont.* 2 *Inſt.* 52, 592. But that is to be taken for a further Order of the Party committing. 1 *Lev.* 230.

So, where a Statute authorizes a Commitment, it ought to conclude, *until he do that which the Statute requires.* *R. Carth.* 152, 3.

And therefore, a Commitment by Commiſſioners of Bankrupts, *until he conform to their Authority*, is bad. *R.* 1 *Sal.* 348. *Vide Bankrupt*, (D. 8.)

By the Secretary of State, *until diſcharged by Law*, where he was committed by the *St.* 35 *El.* 2. for not anſwering, whether Jeſuit or not. *R.* 1 *Sal.* 351. *Carth.* 291.

By a Juſtice of Peace, *until diſcharged by Law*, where it was for not accounting as Overſeer by the *St.* 43 *El.* 2. *R. Carth.* 152.

So a Commitment or Diſtreſs by a General Warrant made before the Offence committed, is bad, if a Warrant is neceſſary. *Semb. Mod. Ca.* 214.

But a Warrant will be good, tho' directed to a private Perſon. 1 *Sal.* 347.

Tho' it does not deſcribe the Offence plainly in the Warrant; for it is ſufficient to ſay, that he was an Owler, Smuggler, *&c.* 2 *Mod. Ca.* 5. *Vide* 2 *Inſt.* 591.

So an Officer at his Peril muſt take the very Offender named in his Warrant. 11 *H.* 4. 91.

If a Warrant be againſt *B.* and *A.* calls himſelf *B.* upon which the Officer takes *A.* Falſe Impriſonment lies. *R. Mo.* 457. *Hard.* 323.

So an Arreſt after a *Superſedeas* is tortious. *R.* 2 *Rol.* 552. *l.* 45.

(H. 8.) What will be a Juſtification to an Officer, tho' not duly awarded.

And a lawful Warrant from him, who has Juriſdiction of the Cauſe, juſtifies the Officer who executes it, altho' it was irregularly awarded: As, if a Juſtice of Peace grant a Warrant for arreſting for Felony, before any Indictment againſt the Party. 10 *Co.* 76. *b.*

If a *Capias* iſſue at the ſame Time againſt the Principal and his Bail, when it ought to be firſt againſt the Principal, and afterwards a *Scire facias*, and not a *Capias*, againſt the Bail. *R.* 2 *Rol.* 560. *l.* 40.

If Proceſs for good Behaviour iſſues irregularly out of the Seſſions of the Peace. *R. Cro. Car.* 602.

If there be a Warrant by a Juſtice of Peace againſt any one for not working in the Highway, before Summons or Hearing. *R.* 1 *Vent.* 273. *cited Lut.* 1563.

If a *Capias* iſſue out of an inferior Court before Summons. *Per Powel, Lut.* 1565. *R. cont.* 1 *Vent.* 220.

Or, *a Capias ad ſatisfaciendum* out of *C. B.* with a *Teſte* out of Term, tho' the Writ be void. *Sal.* 700.

So it juſtifies the Officer, tho' there was not a proper Foundation for ſuch Warrant, or Proceſs: As, if Proceſs iſſue out of an inferior Court when there was no Plaint. *Per Powel, Lut.* 1565.

So, tho' in Reality there was no Juriſdiction, if there be an Appearance of a Juriſdiction: As, if Proceſs iſſue out of an Inferior Court in a Cauſe alledged within the Juriſdiction, tho' in Truth it ariſes out of it. *R. Lut.* 937, 1566.

If Proceſs iſſue upon a Judgment in *C. B.* which is afterwards vacated for Irregularity. *R.* 1 *Lev.* 95.

Or, upon a Judgment there, when no Judgment is entred upon the Roll. *Mod. Ca.* 184.

If there be a Commitment by a Governor of the Plantations and Council there, upon Examination of the Offence, tho' there does not appear a good Cauſe of Commitment. *R. cont. But the Judgment was reverſed in Parliament.* 3 *Mod.* 160.

So, tho' no Proceſs of ſuch a Nature lies by Law againſt ſuch a Perſon: As, if a *Capias* be awarded againſt a Peer of the Realm. 10 *Co.* 76. *b.*

So, tho' the Judge be apparently miſtaken: As, if the Commiſſioners of Exciſe determine Small Beer to be aſſeſſed as Strong Beer; for both are within their Juriſdiction. *Per Hale, Hard.* 484.

If a Juſtice of Peace convict for more Offences than he ought, or after a limited Time. *Dub. Skin.* 445, 566.

(H. 9.) What not.

But an Officer ſhall not be excuſed, when the Court, or Judge that awards the Proceſs, or Warrant, has not Juriſdiction of the Cauſe: As, if there be Proceſs upon an Appeal in *C. B.*

If there be a Preſentment in a Leet for a private Nuſance. *Per Hale, Hard.* 484.

If the Commiſſioners of Exciſe, who have Juriſdiction for the Exciſe upon Strong-water only, determine Water, Low-wine, *&c.* to be Strong-water. *R. Hard.* 482, 3, 4.

If Commiſſioners of Bankrupts declare a Man to be a Bankrupt, who is not ſo. *Hard.* 478.

If the Commiſſioners of the Cuſtoms determine Callicoe, Silk, *&c.* to be Linnen. *Hard.* 480.

So, if the Juriſdiction be confined to Time, to Place, to Perſons, or other Circumſtances, and the Cauſe does not appear to be within ſuch Circumſtances: As, if there be Proceſs upon a Preſentment at a Leet held above a Month after *Eaſter*, or *Michaelmas*. *Ca. Parl.* 50.

So, if a Cauſe in an inferior Court appears to ariſe out of the Juriſdiction. *Semb. Lut.* 1566.

If upon a Plaint in the Marſhalſea, for a Matter out of the Verge. *Pl. Com.* 37. *b.*

Or, a Preſentment in a Leet, for an Offence out of the Precinct of the Leet. *Per Hale, Hard.* 484.

If a Sheriff impriſon a Man, arreſted upon a Warrant to the Bailiff of a Franchiſe, out of his Franchiſe. *Dub. Ray.* 421. *But afterwards per* 3 *J. it was R. cont. Ray.* 467, 469.

If an Officer arreſts by a Warrant of the *Ch. J.* of *B. R.* after it was determined by the Death of the King. *F,g.* 80.

So, where there are nor ſuch Perſons as can intitle the Court to Juriſdiction: As, if a Plaint be in the Marſhalſea, where neither Party was of the King's Houſehold. *R.* 10 *Co.* 77. *a.*

So, if any Circumſtances requiſite to intitle to the Juriſdiction fail: As, where the *St.* 23 *H.* 8. 5. enables Commiſſioners of Sewers to charge *all thoſe who may have Profit or Loſs, &c. according to the Rate of every one's Portion, &c.* if they aſſeſs him who has Land adjoining to the Sea for repairing a Wall, without others in the ſame Level, who are in the ſame Danger. *R.* 5 *Co.* 100. *a. Acc.* 2 *Cro.* 336.

So, where the *St.* 33 *H.* 8. 6. prohibits *ſhooting in or carrying a Hand Gun, &c.* the Officer ſhall not be excuſed, upon a Conviction againſt him who carries a Gun in Aid of the Sheriff in the Execution of Proceſs; for that is out of the Juriſdiction. 5 *Co.* 72. *a.*

So, where the *St.* 43 *El.* 2. enables *to raiſe by Taxation of Inhabitants, &c. for the Relief of the Poor, &c. of the Pariſh*; if there be a Tax upon the Inhabitants of *B.* for the Relief of the Poor of *A. R. Cro. Car.* 395.

So, if Proceſs be meerly null and void: As, if a *Capias* out of *C. B.* be returnable, omitting a Term. *Semb. per Holt, Sal.* 700.

So, if the Matter be out of the Juriſdiction, the Officer ſhall not be excuſed, tho' he pleads his Warrant ſpecially. *Per Hale, Hard.* 484.

## (I) How a Priſoner ſhall be uſed.

PRISONERS ought to be kept *in ſalvâ & arctâ Cuſtodiâ.* 2 *Bul.* 148, 191.

By the *St.* 8 & 9 *W.* 3. 26. All Priſoners for Contempt, *Meſne* Proceſs, or in Execution, ſhall be actually detained in the Priſons of the King's Bench, and Fleet, or Rules of the ſame, till diſcharged by Law.

But a Gaoler ſhall not uſe Dureſs for extorting Money from a Priſoner: And therefore, where a Gaoler *poſuit Priſon' in profundo Gaolo inter Lenones, &c. quouſque ſolvit* 40*s.* he ſhall be fined for it. 12 *Co.* 127.

Or, detained after his Diſcharge till he pays for his Liberty, *et pro Ferris.* 12 *Co.* 127.

Impriſonment ought to be *Cuſtodia, non Pœna. Co. L.* 260. *a. Fl.* 1. *ca.* 26. *S.* 1.

So no Torture to a Priſoner will be warranted by Law, or Preſcription. 3 *Inſt.* 35.

And therefore, a Priſoner cannot be put to the Rack to extort a Confeſſion. *R. Ruſhw.* 638.

*Cuſtodes Gaolarum pœnam ſibi commiſſis non augeant, nec quicquam torqueant, vel redimant. Fl.* 1. *ca.* 26. *S.* 5.

They cannot uſe *Suſpenſionem Corporis per Pedes, Sciſſuram Unguium. Fl.* 1. *ca.* 26. *S.* 4.

By the *St.* 1 *Ed.* 3. 7. They cannot by Pain to a Priſoner procure him to be an Appealor of others; and the Juſtices of both Benches, of Aſſiſe, and Gaol-Delivery, may inquire of ſuch Pains, *&c.*

And by the *St.* 14 *Ed.* 3. 10. it is Felony for a Gaoler to force him to be an Appellor. *Vide Juſtices,* (S. 1.)

At Common Law they could not *onerare ferro*; yet by the *St. W.* 2. 13 *Ed.* 1. 11. it is enacted, that Accomptants *carceri mancipentur in ferris*: And therefore, they may put Irons upon their Priſoners for their Safe-guard, if neceſſary. 2 *Inſt.* 381. 1 *Rol.* 807. *l.* 5.

And for Fear of bad Uſage, if a Priſoner dies in Gaol, the Coroner ought to view his Body before Burial. *Fl.* 1. *ca.* 26. *S.* 5. *H. P. C.* 170.

Or, if a Priſoner becomes decrepit, or infirm by Means of ſo many Irons, ſtraitened in his Suſtenance, *&c.* he ſhall have an Action upon the Caſe againſt the Gaoler. *F. N. B.* 93. *H.*

So a Priſoner ſhall be brought to his Trial without Severity. 2 *Inſt.* 315, 316.

Shall not be put to his Anſwer *in Vinculis.* 3 *Inſt.* 35.

*Non producatur armatus.* *Fl.* 1. *ca.* 31.

*Non ligatus manibus.* *Fl.* 1. *ca.* 31. 2 *Inſt.* 316.

And the Judge ought to exhort him to make Anſwer without Fear. 2 *Inſt.* 316.

But he ſhall have *Compedes ſi neceſſe ſit propter Periculum Evaſionis.* 2 *Inſt.* 316.

By the *St. W.* 2. 13 *Ed.* 1. 11. Accomptants ought, in Priſon, *de ſuo proprio vivere*, and alſo other Priſoners. 2 *Inſt.* 381. *De rebus propriis debent ſuſtentari donec liberati fuerint, vel condemnati.* *Fl.* 1. *ca.* 26. *S.* 1.

And therefore, it was enacted by the *St. de Catallis Felonum*, that none ſhould be diſſeiſed *de terris vel tenementis ſuis, vel de catallis ſuis, quouſque convictus fuerit.* *Fl.* 1. *ca.* 26. *Co. L.* 391. *a.*

## (K) What is not a good Cauſe for Impriſonment.

BUT a Man cannot be impriſoned without good Cauſe. *R.* 1 *And.* 298. *Vide Ante*, (H. 5.) *Vide Ante*, (H. 5.)

So he ſhall not be impriſoned after he be let to Bail, tho' an *Habeas Corpus* comes for him. *R.* 2 *Rol.* 558. *l.* 25.

## (L) Remedy for falſe Impriſonment.

### (L. 1.) By Indictment.

IF a Man be impriſoned without Cauſe, there may be an Indictment againſt him who did the Wrong, upon the *St. M. Ch.* 9 *H.* 3. 29. 2 *Inſt.* 55. *Vide Indictment*, (D.)

### (L. 2.) By Action.

So an Action lies for falſe Impriſonment againſt him who did the Wrong. 2 *Inſt.* 55.

Or an Action founded upon *M. Ch.* 9 *H.* 3. 29. 2 *Inſt.* 55.

And that, in all Caſes where a Man is taken in Cuſtody for any Time without lawful Cauſe.

If Proceſs goes againſt *A.* and *B.* acknowledges himſelf to be *A.* yet he may have Falſe Impriſonment. *Hard.* 323. *Mo.* 457.

So, if a Man taken for a lawful Cauſe be continued after the Cauſe removed, an Action lies for falſe Impriſonment: As, if the Sheriff detain a Man arreſted upon Proceſs after a *Superſedeas* delivered; for the Detainer is a new Impriſonment. *R.* 2 *Cro.* 379.

So,

So, if he detain him after the Plaintiff had diſcharged him of his Priſoner, *R.* 2 *Cro.* 379.

But Falſe Impriſonment does not lie, where there was a lawful Taking, tho' there be a Neglect of Duty afterwards: As, if he refuſe Bail; for the Non-feaſance does not make him a Treſpaſſer *ab initio*. *Vide Treſpaſs*, (D.)

So it does not lie againſt an inferior Officer, who does his Duty, for a Neglect or Wrong in another: As if, by the Command of the *Ch. J.* in Court, the Inferior Officer takes a Man, and delivers him to the Marſhal, altho' he afterwards detain him unduly. *R.* 2 *Rol.* 559. *l.* 5.

If a Man take another in Aid of the Sheriff, *&c.* altho' he does not return the Writ, or makes a falſe Return. *R.* 2 *Rol.* 562. *l.* 35, 50.

So it does not lie for taking the Wife of *B.* where the Judgment and Writ was againſt the ſame Woman before her Marriage. *R.* 2 *Cro.* 323. 2 *Bul.* 80.

*Vide Pleader*, (3 M. 22, &c.)

## (L. 3.) By Writ *de Odio & Atiâ.*

So, by the Common Law, where a Man was impriſoned, and might be bailed, a Writ *de Odio & Atiâ* lay, directed to the Sheriff, *quod inquirat utrum A. captus & detentus in Priſonâ, rettatus ſit odio & atiâ.* 2 *Inſt.* 42, 55.

As, if he was taken for the Death of a Man. 2 *Inſt.* 42.

And by the *St. W.* 2. 29. *Appellati & Indictati, ne diu detineantur in Priſonâ, habeant breve de Odio & Atiâ.*

By the *St. M. Ch.* 9 *H.* 3. 26. Nothing ſhall be given for obtaining it.

And altho' it was taken away by the *St.* 28 *Ed.* 3. 9. yet by the *St.* 42 *Ed.* 3. 1. all Statutes againſt *M. Charta* are void, *&c.* whereby this Writ is revived. 2 *Inſt.* 43, 315.

After the Writ delivered to the Sheriff, by the *St. W.* 1. 3 *Ed.* 1. 11. he ſhall make Inquiry *per probes homes, &c.*

If upon Inquiry it be found, that he was accuſed by Malice, or Not Guilty, or *Se defendendo*, or *per Infortunium*, a Writ goes to the Sheriff *de ponendo in Ballium uſque ad proximas Aſſiſas.* 2 *Inſt.* 42.

Or, to 12 Mainpernors. *Fl.* 1. *ca.* 26. *S.* 3. 2 *Inſt.* 42.

But the Writ *de Odio & Atiâ* does not lie, if a Man was indicted before Juſtices in *Eyre*. 2 *Inſt.* 42.

## (L. 4.) By *Homine Replegiando.*

*Vide Pleader*, (3 K. 1, &c.)

So a Man unlawfully detained in Cuſtody may have an *Homine Replegiando*, *ſi non captus ſit per præceptum Regis, vel pro alio Retto, quare ſecundum Conſuetudinem Angliæ non ſit Replegiabilis.* *F. N. N.* 66. *E. Reg.* 77. *b.* 2 *Inſt.* 55.

And he may have an *Homine Replegiando* for a Negro.

Or, an Indian brought by him into *England*, and detained from him. 3 *Mod.* 120.

## (L. 5.) By Diſcharge for Want of Proſecution.

By the *St.* 31 *Car.* 2. 2. If any be committed for Treaſon or Felony expreſſed in the Warrant, on Petition in open Court the firſt Week of the Term, or 1ſt Day of Seſſions of *Oyer and Terminer*, or General Gaol-Delivery to be tried, be not indicted the next Term or Seſſions, he ſhall be bailed on Motion, unleſs Oath be, that the King's Witneſſes could not be then ready.

And if, on Petition in Court the firſt Week of the Term or firſt Day of the Seſſions to be tried, he be not indicted and tried the 2d Term or Seſſions after Commitment, or be then acquitted, he ſhall be diſcharged from his Impriſonment. 2 *Mod. Ca.* 5.

## (M. 1.) When delivered out of Priſon.

WHEN a Man may be delivered out of Priſon by Bail, *Vide* in *Bail.*
When upon *Habeas Corpus*, *Vide Habeas Corpus.*

### (M. 2.) By Conſent of the Party.

If a Priſoner goes out of Priſon by Conſent of the Plaintiff, he ſhall be diſcharged.

Tho' the Plaintiff allows him to treat for an Accommodation, and he without a Keeper, or a Rule of Court, comes to the Plaintiff for ſuch Intent, and no Agreement is made. *R. Sti.* 117. *Vide Eſcape*, (D.)

### (M. 3.) By Breaking Priſon.

What ſhall be an Eſcape out of Priſon, and the Remedy for it, *Vide* in *Eſcape*, (B. 1, &c.—C.—D.) *Vide Eſcape.*

What ſhall be a Reſcue, *Vide Reſcous*, (A.)—*Juſtices*, (R.)

By the Common Law, Breaking Priſon in every Caſe was Felony. 2 *Inſt.* 589. *H. P. C.* 87.

But by the *St.* 1 *Ed.* 2. (which ſeems to be a Confirmation of a like Statute made 23 *Ed.* 1. 2 *Inſt.* 589.) *Nullus qui priſonam fregerit, ſubeat Judicium Vitæ vel Membrorum, niſi Cauſa pro quâ captus fuerit tale Judicium requirat, &c.*

If a Man break out of the Stocks, tho' he was not *infra Parietes Carceris*, it is a Breaking Priſon within the Statute. 2 *Inſt.* 589. *H. P. C.* 107.

Or, out of the Gaol of a Lord of a Franchiſe. *H. P. C.* 107.

Or, out of a Church, where he has abjured. *H. P. C.* 107.

Or, out of the Cuſtody of a Conſtable, or other Perſon, who lawfully arreſts or detains him. *H. P. C.* 107. 2 *Inſt.* 589.

But if he eſcape before Arreſt, it is no Felony; for he was not in Priſon. *H. P. C.* 111. 2 *Inſt.* 590.

Breaking Priſon is no Felony, if the Priſon be not actually broke. 2 *Inſt.* 589. *H. P. C.* 108.

As, if the Priſoner goes out when the Door is open. 2 *Inſt.* 589. *H. P. C.* 108.

Or, if the Priſon is broke by others, without his Privity. 2 *Inſt.* 589. *H. P. C.* 108.

Or, he is reſcued out of Cuſtody by others, without his Privity 2 *Inſt.* 589. *H. P. C.* 108.

Or, is let out by Conſent of the Gaoler. 2 *Inſt.* 589. *H. P. C.* 108.

Or, if he break Priſon for Neceſſity, when it is burnt by Lightning, or by other Perſons, without his Privity. 2 *Inſt.* 590. *H. P. C.* 108.

Breaking Priſon is no Felony, if the Priſoner was committed for an Offence, which does not require Judgment of Life or Member; as, for Petit Larceny. 2 *Inſt.* 590. *H. P. C.* 110.

For Homicide *Se defendendo*, or by Chancemedley. 2 *Inſt.* 590. *H. P. C.* 110.

For giving a mortal Wound of which a Man dies within a Year; for tho' the Death relates to the Wound, yet it was not Felony at the Time of Breaking Priſon. 2 *Inſt.* 591. *H. P. C.* 108.

For Suſpicion of Felony not found by Record, when no Felony is committed. *H. P. C.* 109. 2 *Inſt.* 590.

Or, if the Priſoner was committed without lawful Warrant. 2 *Inſt.* 590, 591. *H. P. C.* 109.

Or, if the Warrant does not ſhew a Cauſe, that requires Judgment of Life or Member. 2 *Inſt.* 591.

But Breaking Priſon is Felony, if the Priſoner be committed by a *Capias* upon an Indictment, or Appeal, or other Record finding the Felony, tho' no Felony was committed. 2 *Inſt.* 590. *H. P. C.* 109.

Or, if committed only on Suſpicion of Felony, when a Felony was committed. 2 *Inſt.* 590, 592. *H. P. C.* 109.

Or, committed for a Felony made ſo by Statute ſubſequent to 1 *Ed.* 2. *H. P. C.* 108. 2 *Inſt.* 592.

If committed for Treaſon, Breaking Priſon is only Felony. 2 *Inſt.* 590. *H. P. C.* 109.

Yet Breaking Priſon with Intent to deliver Traitors is Treaſon; for it is an Abbetting of Treaſon, in which there are no Acceſſories. 2 *Inſt.* 590. *H. P. C.* 109.

A Man may be indicted for breaking Priſon, before he be convicted of the Felony, for which he was committed. 2 *Inſt.* 592. *H. P. C.* 110.

But the Indictment ought to be ſpecial, and ſhew that he was committed for Felony. 2 *Inſt.* 591. *H. P. C.* 109.

# IMPROPRIATION.

*Vide Advowſon*, (E.)

# IN CASU PROVISO.

*Vide Dum fuit infra Ætatem*, (D.)

# INCIDENT.

*Vide Condition*, (G. 10.)—*Courts*, (P. 4.)—*Franchiſes*, (F. 10, &c.)—*Grant*, (E. 11.)—*Homage*, (G. 2, 3.)—*Parceners*, (A. 3, &c.)—*Prohibition*, (G. 23.)—*Rent*, (C. 4.)

# INCLOSURE.

*Vide Common.—Droit*, (M. 1, 2.)

# IN CONSIMILI CASU.

*Vide Dum fuit infra Ætatem*, (E.)

# INCUMBRANCE.

*Vide Chancery*, (4 A. 10.—4 I. 3, &c.)

# INDENTURE.

*Vide Fait*, (C. 1, 2.)

# INDICAVIT.

*Vide Diſmes*, (M. 10.)

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# INDICTMENT.

## (A) Indictment, What ſhall be.

AN Indictment is an Accuſation or Declaration at the Suit of the King, for ſome Offence, found by a proper Jury of 12 Men. *Co. L.* 126. *b.*

And it ought to be found in the ſame County, where the Offence was committed. *H. P. C.* 203. *Vide Action*, (N. 9.)

So, by the *St.* 11 *H.* 4. 9. An Indictment ſhall be void, unleſs made by Enqueſts of the King's Liege People, returned by Sheriffs or Bailiffs of Franchiſes, without Nomination of any: of which Enqueſts none ſhall be outlawed, or fled to Sanctuary for Treaſon, or Felony.

So, if any one was outlawed, or returned at the Nomination of the Party, *&c.* the whole Indictment will be avoided, tho' 20 others were upon the ſame Enqueſt. *H. P. C.* 202.

And therefore, an Indictment, which does not appear to be before 12 *probos & legales homines* in the ſame County, ſhall be quaſhed. *R.* 2 *Rol.* 82.

The Indorſement upon the Indictment made by the Jury is Part of the Indictment. *R. Yel.* 99.

And if the Jury find *Billa vera* for Part, and *Ignoramus* for other Part, it is void; for they ought to find the Whole, or nothing. *R. Yel.* 99. 1 *Sid.* 414.

So, if they find it conditionally: As, *ſi Meſſuagium ſit in Poſſeſſione Domini Regis, tunc Billa vera. R. Yel.* 15.

Or, *quæ eſt Billa vera*, without ſaying expreſly *quod eſt.* 2 *Mod. Ca.* 296.

So upon an Indictment for Murder againſt *A.* and *B.* if they find *Billa vera quoad A.* and *quoad B.* only Manſlaughter. *R.* 1 *Rol.* 407.

So, if upon an Indictment for Murder, they find *Billa vera ſe defendendo. R.* 2 *Rol.* 52.

If upon an Indictment for a Libel, they find *quoad* the Words *Billa vera, ſed utrum malitioſe & ſeditioſe Ignoramus. R.* 1 *Leo.* 287.

But finding *quod ſeparales præſentes ſunt billæ veræ* is well; for that extends to all. *R.* 1 *Sal.* 376.

(B) Pre-

## (B) Preſentment, What.

A Preſentment is, when the Jury preſent an Offence to the Court, without an Indictment delivered to them. 2 *Inſt.* 739.

And therefore, every Indictment contains a Preſentment, but not *é Contra.* 2 *Inſt.* 739.

As, if a Preſentment be found by a ſubſequent Jury, *quod prædict' Indictamentum eſt Billa vera*, it ſhall be quaſhed; for it is no Indictment till the Finding. *R.* 1 *Sal.* 376.

## (C) When neceſſary.

AN Accuſation for Treaſon, Felony, or other Offence, generally, ought to be by Indictment, or Preſentment. 2 *Inſt.* 46.

But at Common Law, if any was taken for Larceny in the Manner, and brought preſently into Court, he might be arraigned without Indictment; and ſuch was the Cuſtom of *Infangtheof* in ſome Manors. *H. P. C.* 198.

So in Treſpaſs, if a Verdict finds, that the Defendant ſtole the Goods, he may be put to anſwer, without other Indictment. *H. P. C.* 199.

If an Approver charge *B.* and afterwards waive his Charge, the King may proceed againſt *B.* thereupon, without Indictment. *Sho.* 109.

So, if an Appellant be nonſuited, the King may proceed againſt the Appellee, without Indictment. *Sho.* 109. *H. P. C.* 199.

So a Man may be charged for an Offence under Felony by Information. 1 *Sho.* 107, *&c.* 5 *Mod.* 459. *Vide Information*, (A. 1.)

## (D) For what Offence an Indictment lies.

*Vide Information*, (B.)

AN Indictment lies for every Crime by Common Law, or Statute: As, for Treaſon, or Felony.

Miſpriſion, Perjury, Subornation, Forgery, *&c.*

So, for Kidnapping. *Comb.* 10.

So, for a Conſpiracy to charge one with an Offence, without more. *R. Mod. Ca.* 185.

So, for every Miſdemeanor to the Prejudice of the Publick Good: As, for a Libel againſt the Government, or a Magiſtrate. *Sal.* 698. 3 *Mod.* 139.

Tho' the Words are not actionable. *R.* 3 *Mod.* 139. *Vide Libel*, (A. 1, &c.)

For Words, which tend directly to the Breach of the Peace. *Sal.* 698.

So, for every Breach of the Peace; as, falſe Impriſonment, 2 *Inſt.* 55. Battery, Riot, *&c.*

Sending a Challenge. *Comb.* 10. *Sal.* 698.

Debauching another Man's Wife. *Comb.* 377.

For an Abuſe in the Execution of an Office: As, the Removal of a ſick poor Perſon. 2 *Mod. Ca.* 326.

For a Refuſal in any Officer to execute his Office. *R.* 1 *Sal.* 381. *Skin.* 370. 2 *Sho.* 75.

Or, a Refuſal to recieve, or maintain his Apprentice. *R.* 1 *Sal.* 381. *Mod. Ca.* 163.

So, for a bad Contrivance, tho' it be not executed: As, for a Contrivance to kill ſuch a one. *R.* 1 *Sid.* 231.

To charge one with a Baſtard, whereby he may gain Money from him. *R.* 1 *Vent.* 304, 5.

If one ſlander a Juſtice of Peace in the Execution of his Office. *Comb.* 46, 65.

Or, refuſe Obedience to an Order of Juſtices. *Comb.* 63, 213, 325.

If any one collect Money for the publick Uſe, and do not pay it. 1 *Rol.* 2.

So if he refuſe to be a Juror within his Wardmote. *Semb.* 2 *Sho.* 529.

So, for a great Immorality in Publick, (but it was accompanied with a Riot.) *R.* 1 *Sid.* 168.

For ſetting up a Mountebank's Stage. *Comb.* 304.

So, for a Fraud or Deceit upon a particular Perſon: As, for playing with falſe Dice. *R.* 2 *Rol.* 107.

Pretending to be a Broker and ſelling Beer, for *Portugueſe* Wine. *Mod. Ca.* 301.

For forging a Protection, tho' he could not uſe it. 1 *Sid.* 142.

If a Tradeſman commits a Deceit, or Abuſe in his Trade. *Per Holt, Comb.* 16.

If any one by falſe Inſinuations gets a Note, an Account ſigned, *&c.* into his Hands, and then cancels it. *Mod. Ca.* 175.

So, for any thing generally prohibited by Statute, if it be done, an Indictment lies for it: As, for Champerty. *Cr. Juſt.* 87. *b.* *Vide* in *Actions upon Statutes.*

For being a Vagabond. *R.* 2 *Cro.* 577. 2 *Rol.* 172.

For ſelling in Pots unſealed. 1 *Sid.* 409. 1 *Vent.* 13.

For travelling with more than 5 Horſes, contrary to the *St.* 22 *Car.* 2. 4 *Mod.* 145.

So, if a Thing before unlawful be prohibited by Statute, and a particular Remedy or Method directed for the Puniſhment, yet an Indictment lies for it: As, for keeping Hogs in the City of *London*, contrary to the *St.* 2 *W. & M.* 8. *S.* 20. for it is a Nuſance by the Common Law. *Sal.* 460.

So an Indictment lies for a Thing to the Publick Damage, tho' prohibited only by a private Statute. *Per Twiſd.* 1 *Sid.* 209.

For a Common Nuſance.

For ſetting up a Fair, Market, Leet, *&c.* *Mod. Ca.* 183.

For fiſhing in another's Fiſh Pond. *Mod. Ca.* 183.

## (E) For what, not.

BUT no Indictment lies for a Thing prohibited by a Statute which directs a particular Method of Proſecution, if it was no Offence before: As, for keeping an Alehouſe without Licence. *Per Haught.* 2 *Rol.* 398. *Pal.* 388. *R. in Joice's Caſe, Sho.* 399. *Semb. Sho.* 398, 9. *R. Sal.* 460. *Mod. Ca.* 86.—*Per* 2 *J. Ch. Juſt. cont.* 4 *Mod.* 144. *Dub. per Holt, Comb.* 405.

For being a Juſtice of Peace, when he had not 20*l. per Annum.* *R.* 2 *Cro.* 643, 4. 2 *Rol.* 247, 8.

If a Nonconformiſt come within 5 Miles of a Corporation, where the *St.* 17 *Car.* 2. 2. gives 40*l.* Penalty, to be recovered by Debt, or Information. *R. cont. per* 2 *J.* 1 *Mod.* 34. 1 *Vent.* 63. 1 *Sid.* 439. But the Reporter makes a *Quære*, and *Sho.* doubts of it, *Sho.* 399. *Denied to be Law. F, g.* 47.

If an Overſeer refuſe to make an Account. *Dub.* 5 *Mod.* 180.

If a Man having Lands which maintain a Plough, do not ſend his Cart to the Repair of the Highway. *Dub.* 2 *Rol.* 412.

If any make Bricks contrary to *St. Geo.* which gives a Penalty. *F, g.* 47.

So an Indictment does not lie for a Thing prohibited by a private Statute, which tends only to the Damage of a particular Perſon. 1 *Sid.* 208, 209.

So an Indictment does not lie for a Miſdemeanor, which prejudices a particular Perſon only: As, for inticing away an Apprentice from his Service. *R.* 1 *Sal.* 380. *Dub. Mod. Ca.* 99. *Acc. Mod. Ca.* 182.

For incloſing Land, whereby Commoners cannot take their Common. *Semb. Cro. El.* 90.

For cheating in woading Cloth to the 3d but not to the 4th Stall, as Uſage requires. *R. Skin.* 109.

So it does not lie for unmannerly Words of a Mayor, *&c.* of a Corporation, tho' they are a Cauſe for Surety of his good Behaviour, and for a Commitment unleſs he gives Surety. *R. Sal.* 697. *Mod. Ca.* 124.

Nor, for Words to the Prejudice of a Market of a Corporation. *R.* 1 *Sal.* 370.

Or, to the Scandal of a Juſtice of Peace for ſuch a particular Fact. *R. Sal.* 698.

So it does not lie for impoſing upon the Credulity of another: As, if he receive Money from *B.* alledging that *A.* ſent him for it, whereas *A.* did not ſend him; unleſs he comes with falſe Tokens. *R.* 1 *Sal.* 379. *Mod. Ca.* 105.

If a Man upon Payment of Money do not deliver the Goods pledged for it. 1 *Sal.* 379.

So an Indictment does not lie againſt a Juſtice of Peace, *&c.* for not committing a Rioter charged by Oath; for he is the Judge in ſuch a Caſe. *Comb.* 317.

## (F) When an Indictment againſt ſeveral is good.

SO, for an Offence joint and ſeveral in it's Nature, 2 may be indicted together: As, for a Treſpaſs. 1 *Sal.* 384.

For Extortion. *R.* 1 *Sal.* 382.

Huſband and Wife for keeping a Bawdy-houſe; for it is a Nuſance. *R.* 1 *Sal.* 384.

So, for keeping ſeveral Inns *ſeparaliter*, *ad Nocumentum.* 2 *Rol.* 345.

But where a ſingle Act makes an Offence, ſeveral cannot be indicted for the ſame Act: As, for uſing a Trade without being an Apprentice. 1 *Sal.* 382.

For having Inmates in their Houſes. *R.* 2 *Rol.* 164.

For doing a Thing againſt a Statute, or Proclamation. *Mod. Ca.* 210.

So, if ſeveral are joined in the ſame Indictment for having ſeveral Inns, they muſt be charged ſeverally for their Offence. *R.* 2 *Rol.* 345.

## (G) The Form of an Indictment.

### (G. 1.) It ought to have Certainty.

(G. 1.) Of the Party. *Vide Abatement*, (F. 22, &c.)

AN Indictment ought to be certain. 5 *Co.* 121. *a.*

Yet Certainty to a general Intent is ſufficient. *Co. L.* 303. *a.* 5 *Co.* 121. *a.*

And

And therefore, an Indictment ought to ſhew the Chriſtian and Surname of the Defendant.

And by the Common Law, if the Defendant had a Dignity, it ought to add his Dignity; for it is Parcel of his Name.

So, if he had an Office, and was indicted in Reſpect to his Office, it ought to add his Name of Office.

So, by the *St.* 1 *H.* 5. 5. The Addition of the Defendant's Eſtate, Degree, or Miſtery, the Town, or Place, and County of which he is or was; and if omitted, Outlawry thereon ſhall be void, and the Indictment may be abated by Exception. *R.* 2 *Rol.* 225. *Vide Abatement*, (F. 23, &c.)

The Addition may now be of a Degree by Creation, or without Creation: As, *Earl*, *Biſhop*, *Knight*, *Eſquire*, *Gentleman*, *Widow*, *Doctor*, *Clerk*, *&c.* 2 *Inſt.* 666.

Or, of an Occupation: As, *Merchant*, *Grocer*, *Labourer*, *Spinſter*, *&c.* 2 *Inſt.* 668.

And his reputed Degree is ſufficient: As, if he be called *Gentleman*, where he was only *Yeoman* in truth. *R.* 6 *Co.* 67. 3 *Inſt.* 668.

But if he be called *Yeoman*, *Spinſter*, *&c.* where in truth he is a *Gentleman*, and ſo reputed, the Indictment ſhall be quaſhed. 2 *Inſt.* 667, 668.

But an Addition of Office is not ſufficient, unleſs he be indicted in Reſpect of his Office; for it is uncertain, being competent to all Degrees, as *Farmer*, *Butler*, *Servant*. 2 *Inſt.* 668.

Nor an Addition of *Citizen*; for it does not ſhew his Degree, or Miſtery. 2 *Inſt.* 668.

Nor, of *Vagabond*, *Heretick*, and the like. 2 *Inſt.* 668.

If a Mercer, *&c.* be a Gentleman he ought to be named by the Higheſt, *viz. Gentleman*. 2 *Inſt.* 668, 669.

And the Addition ought to be annexed to the Perſon indicted; for after an *Alias dictus*, it is not ſufficient. 4 *Ed.* 4. 10. *a.* 2 *Inſt.* 669.

So, *A. Uxor B. Spinſter*; for it may be referred to *A.* or *B.* *Dy.* 46. *b.*

Otherwiſe, if it was *A. viz. E. nuper Yeoman*; for that cannot be referred to the Wife, but only to the Huſband. *R. Dy.* 47. *a.* *Cro. El.* 750.

The Addition of the Place may be, *nuper*. 2 *Inſt.* 669, 670.

If a City or Borough be a County, the Addition of that only (as of *London*) is ſufficient. 2 *Inſt.* 669.

The Addition of a Pariſh is ſufficient. 2 *Inſt.* 669.

But if there be two Towns in one Pariſh, he ought to be named of one of the Towns 2 *Inſt.* 669.

Or, if there be *D. magna & parva*, the Addition of *D.* alone is not good. 2 *Inſt.* 669.

It ought to be plainly expreſſed that he is of ſuch a Place: And therefore, *A. Mercator de London* is not ſufficient; for perhaps he does not reſide in *London*. 4 *Ed.* 4. 10. *a.*

So, *A. Parſon of D.* for he may be Parſon there without Reſidence. *Cont.* for Non-Reſidence ſhall not be intended. 2 *Inſt.* 669.

If an Indictment gives a bad Addition, it will be help't by the Appearance of the Defendant. 2 *Inſt.* 670.

So, if there be no Addition. *Per Keeling*, 1 *Sid.* 247.

And an Outlawry upon it ſhall be avoided only by Error, or Plea, tho' by the Statute it is ſaid to be void. 2 *Inſt.* 670.

It is ſufficient if the Addition be in *Engliſh*. *R.* 1 *Sid.* 101.

If there be an Indictment as Acceſſory, it muſt have the Name of the Principal.

If the Surname be miſtaken in an Indictment, he ſhall anſwer to the Felony. 1 *H.* 5. 5. *b.* As, *Martyn*, for, *Morten*. *R. Kel.* 12.

Otherwiſe, if his Name of Baptiſm be miſtaken. 11 *H.* 4. 41. *b.* *F. Corone* 88.

So, in Treaſon, or Treſpaſs, *quod procuravit quendam ignotum*, is ſufficient; for all are Principals.

Or, *quod quidam ignotus* in a Vizor gave the mortal Stroke. *R. Kelk.* 10.

(G. 2.) Of the Time, and Place. (*Vide Ante*, (G. 1.)

So it ought to ſhew the Day and Year of the Offence. *St.* 95. *a.*

And the Place. *Dy.* 69. 1 *Sal.* 380. *R. Lat.* 194. *St.* 95. *a.*

And by the *St.* 18 *H.* 6. 12. If a Place be alledged and there is no ſuch, it is void.

So, if the Day of the Month be named without the Year, it is not good.

Or, if the Day be uncertain; as, *in Feſto S. Petri*, when there are 2 Feaſts of *St. Peter*.

So the Time and Place ought to be repeated to every material Fact: And therefore, *quod* 10 *M. apud B. inſultum fecit & cum Gladio felonice percuſſit*, without ſaying, *adtunc & ibidem percuſſit*, is bad. *Dy.* 68, 69.

So the Reference ought to be to a Time or Place certain: As, if it ſays, *quod percuſſit apud A. in Comitatu prædicto*, where 2 Counties are mentioned before, tho' one was in the Addition only. *R.* 1 *Rol.* 223.

But the Hour is not neceſſary in an Indictment, tho' it is in an Appeal. 2 *Inſt.* 318. *Mar. pl.* 127.

So it is ſufficient, if the Time be aſcertained by the Caption: As, 1° *M. ult.* without the Year; for that appears by the Caption.

So, 10 *die poſt Paſch' ult'*.

So, *Octab. Trin, &c.* which ſhall be intended 8° *die* not 4° *die poſt*.

So *diverſis vicibus inter* ſuch a Day, and ſuch a Day, is ſufficient in an Information. *R.* 2 *Lev.* 71.

So the preciſe Day is not neceſſary; for he may be found Guilty if the Offence was at a former, or a ſubſequent Day. *R.* 2 *Inſt.* 318.

And if the Offence be proved at a Day before or after the Time alledged in the Indictment, it will be well. *R. upon an Indictment for High Treaſon. Kelg.* 16.

Tho' it was 11 or 12 Years before. *Kelg.* 16.

So, in every Indictment for Treaſon, Felony, *&c.* *R. per all the Judges*, 3 *Inſt.* 230, *Syer*.

And if the Offence was at a Day after the Time in the Indictment, the Jury may find the very Day of the Fact to aſcertain the Forfeiture, or if they find the Party guilty generally, a Leſſee, *&c.* may falſify as to the Time, tho' not as to the Offence, for avoiding the Forfeiture. *R.* 3 *Inſt.* 230.

So to a Neglect or Non-feaſance no Time is neceſſary; for the preſent Time ſhall be intended: as, *quod non eſcuriavit foſſam, &c.*

So the Place is ſufficient, without the County; if the County be in the Margin.

So the Time or Place need not be repeated to Circumſtances. *Mar. pl.* 127. 2 *Rol.* 226.

And it is ſufficient, that it be coupled to a Time precedent in an Indictment for a Treſpaſs: as, an Indictment for a Forcible Entry, *quod* 1° *M. intravit & ipſum diſſeiſivit*, without ſaying, *adtunc & ibidem diſſeiſivit*, is ſufficient. *R.* 2 *Cro.* 41.

If a mortal Wound be given, upon which the Party dies at another Day, the Death ought to be alledged at the laſt Day.

By the *St.* 2 & 3 *Ed.* 6. 24. If the Stroke be in one County and the Death in another, the Indictment may be in the County where the Death was.

And an Acceſſory in one County to an Offence in another, may be indicted where he was Acceſſory.

If

If a Robber in one County fly with the Goods into another, he may be indicted of the Felony there, but not of the Robbery.

(G. 3.) Of the Offence. What ſhall be uncertain.

So an Indictment ought to ſhew the Certainty of the Offence: And therefore, an Indictment for Murder, or Felony, muſt ſhew all the Circumſtances of the Fact in certain: As, by whom.

In what Manner committed.

Upon what Part the Wound was given, upon the Face, Arm, *&c.* 4 *Co.* 41. *a.* *R.* 5 *Co.* 121. *b.*

And of what Depth or Breadth the Wound was, when there was no Amputation. 4 *Co.* 42.

If it ſays, *quod ſuffocavit, &c. et quâ Suffocatione obiit*, without ſaying, *de quâ, &c.* it is bad. 1 *Rol.* 137.

So an Indictment, *quod dedit plagam circiter Pectus*, or, *Super Brachium*, without ſaying, *dextrum*, or, *ſiniſtrum*, is bad. 4 *Co.* 40. *b.* *R.* 5 *Co.* 121. *b.*

So an Indictment for Larceny ought to ſhew the Value of the Goods, to diſtinguiſh Grand, or *Petit* Larceny.

If it be a live Thing, it is ſaid *Pretii*, if dead, *ad valentiam.*

So an Indictment for an Eſcape, or Breaking Priſon ought to ſhew for what Crime he was taken, or committed. *St.* 95. *a.*

For a Contempt in not executing a Warrant, it ought to ſhew the Nature and Tenor of the Warrant. *R.* 1 *Vent.* 305.

An Indictment for Extortion ought to ſhew in what Inſtance committed. *Mod. Ca.* 32, 3.

What Fee was due, or that nothing was due. *R.* 3 *Leo.* 268.

An Indictment for ingroſſing *magnam Quantitatem Straminis & Fœni*, without ſaying, how much, is bad. *R. Cro. Car.* 381.

So, for erecting *diverſa Cottagia. Sho.* 389.

Or, for ſtopping *quandam partem Regiæ Viæ, Aquæ curſus, &c. Sho.* 389.

Or, for an Aſſault upon ſeveral of the King's Subjects, between ſuch a Day, and ſuch a Day. *Per Holt, Sho.* 390.

For ſaying or publiſhing ſuch Words, *aut ſimilia. Bro. Action ſur Caſe* 112.

*Quod fabricavit, ſeu fabricari cauſavit, &c.* *R.* 1 *Sal.* 342, 371.

*Quod cepit extorſivè pro quolibet equo* 2 *d. pro quibuſlibet* 20 *Ovibus, &c. R.* 4 *Mod.* 103.

So, *quod A. exiſtens Servus, ſive Deputatus* took, *&c.* is bad. *R.* 2 *Rol.* 263.

*Quod cum* there was ſuch an Order, *&c.* for it ſhould be poſitive, that there was. *R.* 1 *Sal.* 371.

*Quod exoneravit Tormentum dans plagam*, without ſaying, *percuſſit. R.* 5 *Co.* 122. *b.*

*Quod neſciens potum fore venenatum bibit*, without ſaying expreſly, *venenum bibit. R.* 4 *Co.* 44. *b.*

That he refuſed Bail, without ſaying, that any was offered. *R. Mod. Ca.* 32, 3.

That he made *Panes non habentes debitum pondus*, without ſaying, what is due Weight. *R. Sal.* 687.

*Quod exercuit quaſdam Diabolicas artes, Anglice*, Witchcraft. *R. Lat.* 156.

*Quod dixit diverſa ſcandaloſa verba* of ſuch a Magiſtrate, without ſaying, what Words. *R.* 1 *Rol.* 79.

That he took a Servant without a Teſtimonial, it ought to ſhew a former Service. *Skin.* 343.

That he inticed *A.* from his Service, it ought to ſay, *quod reliquit.* *R. Mod. Ca.* 99, 101.

That he inticed a Servant to take the Goods of his Maſter, it ought to ſay expreſly, that he took them. *R. Mod. Ca.* 289.

So where an Indictment is founded upon a Contrivance, a Fact in Purſuance of it ought to be alledged. 1 *Sal.* 380.

If there be an Indictment for Refuſal of an Office, it ought to ſhew an Election by good Authority. 5 *Mod.* 96.

If for a *Reſcous*, it ought to ſhew the Writ, and alſo the Warrant. *R.* 2 *Mod. Ca.* 357.

An Indictment *pro contrafact' Monetum ad inſtar pecun' Domini Regis*, ought to ſhew, *ad inſtar* what Pieces, *viz. Groats, Shillings, &c.*

(G. 4.) And not ſupplied by *Innuendo.*

So Words uncertain cannot be ſupplied by an *Innuendo:* As, an Indictment for Treaſon for ſaying, *We have had 2 wicked Kings* (innuendo *Cha. 1ſt and Cha. 2d*) *if they* (innuendo *the People*) *would ſtand to their Principles, we ſhould conquer our Enemies* (innuendo *the King and all his loyal Subjects,*) is bad; for an *Innuendo* cannot determine the Senſe of the Words. *R.* 3 *Mod.* 53.

(G. 5.) What is a ſufficient Certainty.

But Certainty in an Indictment to a general Intent, is ſufficient. *Co. L.* 303. *a.* 5 *Co.* 121. *a.*

And therefore, an Indictment for Felony, *quod cepit bona cujuſdam ignoti*, is ſufficient. *St.* 95. *b.*

Or, an Horſe, *&c.* of ſuch a Value, without mentioning any Owner.

*Quod percuſſit ſuper ſiniſtram Partem lateris*, is well; for *latus* is a known Part. *R.* 2 *Cro.* 95.

So *Dans plagam, ſeu Contuſionem* is well. *R. Mar. pl.* 127.

*Quod languebat a* 15°. *die ad* 16^m. *diem*, without ſaying, to what Hour in the ſame Day. *Mar. pl.* 127.

Indictment *quod fecit Libellum ad tenorem & Effectum ſequentem.* *R.* 1 *Sal.* 324, 417.

*Quod fabricavit* a Leaſe with the Mark of *B. cujus Tenor ſequitur*; tho' the Mark is not ſhewn. *R.* 1 *Sal.* 342.

*Quod fabricavit Scriptum Obligatorium*; tho' it does not ſay that it purports to be an Obligation. *R.* 1 *Sal.* 342.

*Quod fecit Libellum in quo continetur inter alia, &c. R. Sal.* 417.

*Quod ipſe & 20 alii ingroſſaverunt*, without ſaying, *& quilibet eorum ingroſſavit*; for they might join. *Cro. Car.* 380.

*Quod recenter recepit Felones*; tho' it does not ſay, that he knew them to be Felons. *R.* 2 *Lev.* 208.

*Quod A. exiſtens* ſuch an Officer of ſuch Age, *&c. fecit, &c.* without ſaying, *tunc exiſtens*; for where this Word relates to the Perſon, and is not collateral, it ſhall have a general Conſtruction. *R.* 2 *Rol.* 226.

*That A. knowing B. was indicted for Forgery, concealed a Witneſs againſt him*; it is ſufficient that *B.* was indicted. *R. F. g.* 122, 263.

So Surpluſage does not vitiate an Indictment. *R.* 4 *Co.* 41. *a. R.* 5 *Co.* 121. *b.* 2 *Mod. Ca.* 327.

Nor falſe Latin: As, *præfatæ Reginæ. R.* 5 *Co.* 121. *b.*

So Inducement to an Offence does not require ſo much Certainty: As, in an Indictment for an Eſcape, *debito Modo commiſſus*, or, by what Authority, is not neceſſary. *R.* 1 *Vent.* 170.

Indictment *quod A. & B. ſuper C. inſultum fecerunt, &c.* tho' as to *B.* it is found *Ignoramus. R. Cro. Car.* 464.

So

So an Indictment need not aſcertain more than ſhews the Offence, not that which aggravates it: As, if it be for taking Fiſh out of his Pond, it need not name the Number or Quantity. *Per* 2 *J. Twiſd. cont.* 1 *Lev.* 203.

Neither needs there more Certainty than the Words of the Statute import. *R.* 2 *Rol.* 226.

If it be for forging a Cocquet for 5 *Sarcinis lini*, it is ſufficient. *Mod. Ca.* 87.

So, *Contra formam Statuti*, helps any Uncertainty not material. 2 *Rol.* 227.

## (G. 6.) Ought to have proper Terms of Law.

So an Indictment ought to make Uſe of Terms proper or peculiar to the Offence: As, an Indictment for Treaſon ought to ſay, *Proditorié.*

And *Contra Ligeanciæ ſuæ Debitum. R.* 3 *Lev.* 396. *Ca. Parl.* 186. 4 *Mod.* 165. *Skin.* 442.

So an Indictment for Felony ought to ſay, *Felonicé. St.* 96. *a.*

For Murder, it ought to have the Word, *Murdravit. Dy.* 261. *a.* Or, *Murderavit. Per Coke*, 1 *Rol.* 137.

For Burglary, the Word *Burglariter*, or, *Burgulariter. R.* 4 *Co.* 39. *b*, *Vaux.*

And *Burgaliter* is not ſufficient. 4 *Co.* 39. *b.* 40. *a.*

For a Rape, it ought to have the Word, *Rapuit. St.* 96. *a.*

An Indictment for Barretry ought to ſay *Communis Barrectator.*

For Scolding, *Communis Rixatrix*, for, *Calumniatrix*, is not ſufficient. *Mod. Ca.* 11.

So an Indictment ought to conclude, *Contra Pacem. R.* 2 *Cro.* 527. *Cro. Car.* 584. *R. per* 3 *J. Mod. Ca.* 128.

If an Offence be in another Reign, *Contra Pacem nuper Regis & Regis nunc. R. Yel.* 66.

If founded upon a Statute it ought to conclude, *Contra formam Statuti. R.* 1 *Sal.* 370. *R.* 2 *Rol.* 38.

And, *Contra forman Statuti*, is bad, where there are ſeveral Statutes in the Caſe. *R.* 2 *Cro.* 142.

And, *Contra formam Statuti prædicti*, will be bad, where the Statute is miſrecited. *Per Twiſd. Ray.* 192. *Lut.* 140.

So, *Contra formam Statuti*, ſhall not be rejected, tho' for Part it would be good by the Common Law. *R.* 4 *Leo.* 49.

Or, tho' the Offence was at the Common Law, and the Statute adds a Penalty. *Mod. Ca.* 17.

But by the *St.* 37 *H.* 8. 8. The Omiſſion of, *vi & armis, viz. Gladiis Baculis & Cultellis*, does not vitiate. *R.* 2 *Lev.* 221.

So the Omiſſion of, *Contra Pacem*, does not vitiate in an Indictment for a Non-feaſance. *R.* 1 *Vent.* 108, 111. *R.* 1 *Sal.* 381.

Or, *Contra Pacem nuper Regis*, where the Continuance of the Fact is the Offence, and the Original of it only Inducement. *R. Yel.* 66.

So, *Contra formam Statuti*, is not neceſſary where the Offence was by the Common Law, and the Statute adds only a Penalty, *&c. R.* 1 *Vent.* 13. *Sal.* 460. 1 *Sid.* 409. *Comb.* 371. *R.* 2 *Mod. Ca.* 11.

And, *Contra formam Statuti nuper editi*, is well, tho' the Statute is miſrecited; for then the Court will take Notice of the Statute. *Ray.* 192. *Lut.* 140.

So, *Contra formam Statuti*, is not neceſſary, where the Offence is a Breach of Duty, tho' his Duty in this Particular was preſcribed by Statute. *R.* 1 *Sal.* 381. *Per Eyre, Comb.* 205.

So,

So, in an Indictment for Murder, if there be the Word, *Murdravit*, *ex Malitiâ præcogitatâ* is not neceſſary. *Dy.* 69. *a.*

## (H) When quaſhed, if deficient.

A Defective Indictment may be quaſhed upon Motion.

Or a *Nolle proſequi* may be entred by the Attorny General. *Mod. Ca.* 262.

But not in an enormous Crime: As, for Treaſon or Felony; for the Court will put the Defendant to his Demurrer, or Plea. *Vide Information*, (D. 1, &c.)

Nor an Indictment for Perjury, or Forgery, or Subornation. 1 *Sal.* 372. *R.* 1 *Sid.* 54. 1 *Vent.* 370.

Or, for Extortion. 5 *Mod.* 13.

Or, for a Nuſance. 1 *Sal.* 372. 1 *Vent.* 370. without a Certificate that it is removed. *Cro. Car.* 584. *Acc. Sal.* 460.

Or, for not repairing an Highway, or Bridge. 1 *Sal.* 372. 1 *Sid.* 140.

Or, for inticing away his Servant. 1 *Sal.* 372.

Or, for throwing down Fences contrary to the *St. W.* 2. 4. *R.* 1 *Sal.* 372.

Or, for a Cheat. *R. Mod. Ca.* 42.

Or, for a Diſturbance in Church. 1 *Sid.* 54.

Or, for a Forcible Entry. *Mod. Ca.* 96.

So a Motion for quaſhing ſhall not be allowed after a Recognizance forfeited. 1 *Sal.* 380.

## (I) Proceſs upon an Indictment.

BY the *St.* 25 *Ed.* 3. 14. On an Indictment of Felony before Juſtices of *Oyer* and *Terminer*, a *Capias* ſhall be awarded to the Sheriff, and if he return *Non eſt inventus*, another *Capias* returnable at 3 Weeks, whereby the Sheriff ſhall be commanded to ſeiſe his Goods, and if the Sheriff return *Non eſt inventus*, and the Party does not appear, an Exigend iſſues, and the Goods are forfeited. *Vide Proceſs*, (C.)

If there be an Indictment for a Treſpaſs, the Proceſs ſhall be a *Venire*, and if the Return be, that he has ſufficient, a *Diſtringas in infinitum*; if the Return be *Nichil*, *&c.* there ſhall be a *Capias*, *Alias*, and *Pluries*, and an Exigend till he appears or is outlawed. *Dalt. ch.* 193. *Vide* the *St.* 18 *Ed.* 3. 5.

And after Outlawry the Juſtices of Aſſiſe, or of the Peace, may iſſue a *Capias Utlagatum*, as incident to their Authority. *R.* 12 *Co.* 103.

And tho' the Outlawry be afterwards reverſed, the Indictment ſtands in force. *Mod. Ca.* 115.

By the *St.* 5 *Ed.* 3. 11. Juſtices to hear and determine Felony may direct their Proceſs againſt the Indictee, into any foreign County.

By the *St.* 1 *Ed.* 6. 7. The Proceſs ſhall not be diſcontinued by a new Commiſſion.—So by the *St.* 11 *H.* 6. 6.

By the *St.* 8 *H.* 6. 10. If any, indicted for Felony, Treaſon, or Treſpaſs, dwell in another County, the Juſtices of Peace of the County, or Franchiſe, after the firſt *Capias* is returned, may direct another *Capias* to the Sheriff of the County where the Party dwells, returnable in 3 Months (if the County Court there is held Monthly, but if from 6 Weeks to 6 Weeks, then 4 Months) after the *Teſte*, commanding ſuch Sheriff to take him, or if not to be found, to make Proclamation in two Counties, before the Return of the Writ, that he

he appear before the Juſtices of Peace where indicted, at the Day of the Return of the 2d *Capias*, and then if he appear not, the Exigent ſhall be awarded; but Exigent and Outlawry otherwiſe awarded is void.

And by the *St.* 10 *H.* 6. 6. If ſuch Indictment be removed by *Certiorari*, ſuch 2d *Capias* ſhall be made returnable in *B. R. &c.*

And if the Defendant be in the Indictment named of a foreign County with an *alias dict'* of the ſame County, yet Proceſs goes according to the *St.* 8 *H.* 6. 10. For the *alias dict'* is no Part of his Name, nor ſhall he be put to anſwer to it. 1 *Ed.* 4. 1.

And for the ſame Reaſon, if he be named of the County where the Indictment is taken with an *alias dict'* of the other County, he ſhall not have Proceſs upon that Statute. 1 *Ed.* 4. 1.

By the Equity of the ſaid Statute, if the Indictee be impriſoned in another County, the Juſtices of Peace may award an *Habeas Corpus* to bring him before them.

If a Perſon indicted before Juſtices of Peace find Surety in *Chancery* to appear at the Return of the Writ, he ſhall have a *Superſedeas* to ſuch Proceſs. *F. N. B.* 237. *C.*

So, if he find Surety before 2 Juſtices of Peace, 1 *Quorum*.

By the *St.* 4 & 5 *W. & M.* 22. *S.* 4. (which continued for 3 Years) On Exigent in Criminal Caſes before Conviction, Proclamation ſhall go to the Sheriff of the County, where the Party dwells, according to the *St.* 31 *El.* 3.

And if a *Capias* iſſue upon an Indictment for a Miſdemeanor before a *Venire*, it is Error. *R. Ray.* 375.

But in Treaſon, or Felony, if the Proceſs be a *Venire* and not a *Capias*, it is Error. *Semb.* 3 *Mod.* 265. *Sho.* 75.

By the *St.* 26 *H.* 8. 13. and 5 *Ed.* 6. 11. Proceſs of Outlawry, on an Indictment for High Treaſon againſt an Offender out of the Realm, ſhall be of the ſame Effect as if reſiant in the Realm. *Vide Utlagary.*

If an Indictment be removed into *B. R.* by *Certiorari* out of *London*, or *Middleſex*, by the Courſe of the Court the Defendant muſt give a Recognizance to try it within the ſame Term, or at the Sittings afterwards. *Mod. Ca.* 246.

If it be removed out of another County, the Defendant is *ſine die*, and if he does not appear, Proceſs goes againſt him till he is outlawed. *Mod. Ca.* 246.

But now, by the *St.* 5 & 6 *W. & M.* 2. it ſhall not be removed by the Defendant, unleſs he give Recognizance to try it *ut ſupra*. *Mod. Ca.* 246.

Yet, if it be removed by the Proſecutor, it remains at the Common Law, and the Defendant cannot try it withour Leave of the Court. *R. Mod. Ca.* 246.

## (K) Confeſſion.

IF the Defendant appears, or be brought in by Proceſs, he ſhall confeſs, or traverſe the Indictment.

If he confeſſes the Indictment, he admits himſelf Guilty.

He may confeſs in Perſon, or by Clerk in Court. *Mod. Ca.* 16.

And there ſhall be Judgment againſt him.

And in an Action for the ſame Treſpaſs, his Confeſſion ſhall be Evidence againſt him. 9 *H.* 6. 60. *a.*

But where the Confeſſion proceeds from Fear or Ignorance, the Judge may refuſe the Confeſſion. *St. P. C.* 142.

So a Man may *ponere ſe in Gratiam Regis*, and pray that he may be admitted by Fine. 9 *H.* 6. 60. *a.*

And ſuch a Confeſſion does not conclude him. 9 *H.* 6. 60. *a.*

And he may give Affidavits of a firſt Aſſault, *&c.* by the Proſecutor, for Mitigation of the Fine. 1 *Sal.* 55.

So, after *Not Guilty* pleaded, *Relictâ verificatione*, he may confeſs the Indictment. *Kelg* 11. *Vide Juſtices*, (W. 3.)

So, *Proteſtando quod non eſt culpabilis*, he may plead a Pardon.

So the Attorny General may enter a *Nolle proſequi*. *Mod. Ca.* 261.

But that does not diſcharge the Crime. *R.* 1 *Sal.* 21. *Mod. Ca.* 261.

And afterwards there may be other Proceſs upon the ſame Indictment. *Per Holt*, 1 *Sal.* 21. *Mod. Ca.* 261. *Vide Juſtices*, (W. 3.)

## (L) Traverſe.

IF he does not confeſs, the Defendant traverſes the Indictment, and ſays, *Not Guilty*.

Or, *autrefoits convict*, or *acquit*, *&c.* *Vide Appeal*, (G. 9, 11.)

But *autrefoits acquit* is no Plea, if he was acquitted upon a Trial in a miſtaken County.

Or, upon an inſufficient Indictment.

*Autrefoits acquit* in Burglary is good, tho' there be a 2d Indictment for the Goods of another taken in the ſame Houſe. *R. Kelg.* 30, 52.

But he may be indicted for Felony in taking the Goods of another. *R. Kelg* 30, 52.

So he may plead *autrefoits attaint* for the ſame or another Felony, unleſs it be in a Caſe where the Party without Conviction ſhall not have Reſtitution, or Clergy is allowed in the one, but not in the other Felony. 12 *Co.* 100.

So, a Pardon. 12 *Co.* 100.

But a Pardon by Act of Parliament ought to be allowed, tho' it be not claimed.

If he plead in Court he ſhall be committed till Trial, except where he gives Security to try it at his own Charge. *Mod. Ca.* 114.

So, if he plead in the Office, the Plea ought not to be received without ſuch Security. *R. Mod. Ca.* 114.

If he be committed, the Proſecution ſhall be at the Charge of the Proſecutor. *Mod. Ca.* 114.

If the Defendant appear upon an Indictment for Treaſon, or Felony, he ought to plead preſently.

So, upon an Indictment for a Miſdemeanor, if he does not appear till a *Capias*; for he is in Contempt. *B.p's Tr.* 31.

Or, if he appear upon the Recognizance, tho' he be not in Contempt.

Or, if he appear in his own Perſon, in a Caſe of Privilege.

So, if the Defendant does not plead till a peremptory Rule, he ſhall give Bail to try it the ſame Term. *Mod. Ca.* 42.

But if he appears upon Summons by *Venire* or *Subpœna*, he ſhall have an Imparlance. *B.p's T.* 31.

So, if he plead preſently, he need not try it till next Term. *Mod. Ca.* 42.

The Clerk of the Peace ſhall join Iſſue for the King.

And if the Entry be, *Et A. B. ſimiliter*, *&c.* it is ſufficient, tho' it does not ſay, that he was Clerk of the Peace. *Cro. Car.* 315.

*Vide Juſtices*, (W. 3.)—*Juſtices of Peace*, (D. 13.)

(M) Arraign-

## (M) Arraignment, and Trial.

AFTER Plea, the Defendant ſhall be brought to his Trial. *Vide Juſtices*, (W. 1, &c.)

The Proceeding after the Indictment, by which the Defendant is brought to plead, and afterwards to Trial, is called, *The Arraignment of the Priſoner*.

Juſtices of Peace as well as Juſtices of *B. R.* or Gaol-Delivery, may arraign a Priſoner indicted before them.

If no Arraignment be entred, it will be Error. *Semb.* 3 *Mod.* 265. *Sho.* 131.

But if he have *Oyer* of the Indictment, that imports it. *Semb. Sho.* 131.

After Iſſue upon the Indictment, the Defendant ſhall be bound by Recognizance to put himſelf upon his Trial.

And if there are 2 Indictments againſt the ſame Defendant, he ſhall chuſe which ſhall be tried firſt, not the King. *Mod. Ca.* 168.

If there be a Miſtrial, or Variance between the Indictment and the Record, &c. whereby the Trial cannot proceed, or is ſet aſide, the Recognizance of the Defendant ſhall be forfeited; for there muſt be an effectual Trial. *R. Mod. Ca.* 168.

If ſeveral are indicted for the ſame Offence, there may be a Trial againſt 2 or 3, if the others conſent to confeſs if they are convicted. *Mod. Ca.* 212.

If there are 2 Indictments againſt a Man for the ſame Offence, (as one by the Coroner's Inqueſt, the other by the Grand Inqueſt,) the uſual Courſe is to try him upon both at the ſame Time. 1 *Sal.* 382.

Or, if he be tried upon one, tho' acquitted, he muſt be tried upon the other, and plead the former Acquittal. *R.* 1 *Sal.* 382.

If it appear to be only a Treſpaſs, he ſhall be found *Not Guilty*; for it cannot be found ſpecially, and a Fine for the Treſpaſs. *R. Kel.* 29.

The Indictment ſhall be read to the Priſoner in *Engliſh*, or a Tongue which he underſtands, before he pleads. *R.* 1 *Sid.* 85.

By the *St.* 22 *H.* 8. 14. A Felon may challenge 20 of the Jury peremptorily. *Vide Challenge*, (C. 1.)

And for Cauſe, all that he pleaſes; as, that a Juror is infamous.

Or, had not 40*s. per Annum.*

Or, had not Goods to the Value of 40*l.* if it be in a Borough, according to the *St.* 23 *H.* 8. 13.

Or, was one of his Indictors: By the *St.* 25 *Ed.* 3. 3.

*Vide Juſtices*, (W. 1, &c.)—*Juſtices of Peace*, (D. 14.)

## (N) Judgment.

IF the Defendant be convicted upon an Indictment by Confeſſion or Verdict, there ſhall be Judgment againſt him according to the Nature of the Offence.

If the Defendant be fined, it may be impoſed when he is abſent; for a *Capias pro fine* lies. 1 *Sal.* 56.

But Judgment for a Corporal Puniſhment cannot be given in the Abſence of the Defendant. 1 *Sal.* 56.

Tho' he be outlawed. *R.* 1 *Sal.* 400.

So Execution for a Felony cannot be awarded againſt any one abſent, tho' he be outlawed. 1 *Sal.* 400.

Nor can it be awarded, but in the County where he was attainted. *Semb.* 3 *Mod.* 124.

So Judgment ought not to be without a Demand, *ſi quid dicere habeat quare Judicium non, &c.* *Semb.* 3 *Mod.* 265. *R. Sho.* 132.

And the Priſoner ſhall not tender any Matter for ſtay of Judgment, but what ariſes upon the Indictment. 1 *Sid.* 85.

After Judgment given, the Court may vary it the ſame Term. 1 *Sal.* 401. *Vide Record*, (F.)

An Indictment in *B. R.* ſhall be entred upon the Plea Roll. 1 *Sal.* 371.

And if an Offence appears in the Indictment, for which it may be maintained, it is ſufficient, tho' in other Parts it is bad; for here the Court ſets the Fine in Proportion to the Offence found, and it is not like Declarations where intire Damages are found, which the Court cannot apportion to the good Part of the Declaration. *R.* 1 *Sal.* 384, 5.

*Vide Juſtices of Peace*, (D. 15.)

As to Error upon an Indictment, *Vide Error*, (B.)

For more concerning *Indictment*, *Vide Action upon the Caſe for a Conſpiracy*, (C. 4.)—*Action upon the Caſe for a Nuſance*, (D. 3.)—*Amendment*, (2 C. 1.)—*Appeal*, (G. 16.)—*Barretry*, (C.)—*Battery*, (E. 2.)—*Forceable Entry*, (D. 3, 4.)—*Forgery*, (B. 2.)—*Juſtices of Peace*, (B. 104, 105.—D. 12.)—*Officer*, (G. 11.)—*Parliament*, (L. 13.)—*Reſcous*, (D. 3.)

# INDORSEMENT.

*Vide Fait*, (E. 2.)

# INDUCEMENT.

*Vide Pleader*, (C. 31, 43, 82.—E. 10.—G. 14, 20, 21.—O. 15.)

# INDUCTION.

*Vide Eſgliſe*, (L.)

# INFANT.

*Vide Enfant*—*Adminiſtration*, (E.—F.)—*Voucher*, (D. 2.)

# INFORMATION.

## (A) When it lies.

### (A. 1.) By the Attorny General.

AN Information is a Declaration of the Charge, or Offence againſt any one at the Suit of the King. *Terms de Ley. Verb. Information.*

The King may proceed againſt any one for an Offence under the Degree of Treaſon, or Felony, not only by Indictment or Preſentment, but alſo by Information upon Record. *R. Sho.* 107, *&c.* 5 *Mod.* 459.

And that, not only in the *Exchequer*, but alſo in *B. R.* and other Courts. *Sho.* 109, 110.

In *C. B.* where a Statute gives an Information *in any Court of Record. R.* 3 *Leo.* 48.

An Information may be brought by the Attorny General, *Ex officio*, or by a Common Informer. *Vide the St.* 21 *Jac.* 4.

The Entry of an Information by the Attorny General in *B. R.* is, *Memorandum quod T. T. Miles Attornatus Domini Regis nunc Generalis qui pro eodem Domino Rege in hac Parte ſequitur in propriâ Perſonâ ſuâ venit hic in Curiam dicti Domini Regis coram ipſo Rege apud Weſtmonaſterium die S. proximo poſt, &c. Et pro eodem Domino Rege dat Curiam hic intelligi & informari quod, &c. Clift* 395.

For the *Exchequer*, *Vide Co. Ent.* 372, 376, 378, 381, 384, 387, 390.

But an Information by a Common Informer, and alſo by the Attorny General, ought to be in the proper County. 3 *Inſt.* 193. 4 *Inſt.* 172. *Adm. Cro. Car.* 112. *Per* 2 *J. Cro. El.* 737. *Vide Action*, (N. 10.)

So, by the *St.* 21 *Jac.* 4. Information ſhall not be by the Attorny General, or any other, in the Courts of *Weſtminſter*, for an Offence for which a Common Informer might have an Information before Juſtices of Aſſiſe, *Niſi prius*, Gaol-Delivery, *Oyer* and *Terminer*, or Juſtices of Peace at the Quarter-Seſſions. 4 *Inſt.* 172, 174. *Vide Action upon Statute*, (D.)

Tho' it be for Offences mentioned in the Proviſo. 4 *Inſt.* 174.

So Debt ſhall not be brought in *B. R. &c.* for the Penalty of any Offence within the *St.* 21 *Jac.* 4. if the Offence was not in *Middleſex. R. cont.* 1 *Vent.* 8. 1 *Sid.* 400. *R. acc. per Holt, and all the Judges,—W.* 3. *Vide* 1 *Sal.* 372, 3.

But this *St.* 21 *Jac.* 4. extends only to Offences inquirable before Juſtices of *Niſi prius*, Aſſiſe, Gaol-Delivery, *Oyer* and *Terminer*, or of the Peace. *R. Cro. Car.* 112.

By the *St.* 31 *El.* 5. An Information, where a Penalty is given to the Queen, ſhall be brought in 2 Years after the Offence; if to the Queen and the Proſecutor (unleſs on the Statute of Tillage) in 2 Years after the Year allowed to the Common Informer; or if the Statute limits a ſhorter Time, then ſooner. *Vide Poſt*, (A. 3.)

And if there be a Penalty to the King and the Informer, and the Common Informer does not ſue within the Year, the King within 2 Years afterwards ſhall ſue for the whole Forfeiture. *Mod. Ca.* 220.

Yet if *B.* brings an Action upon the *St.* 23 *H.* 6. for the Penalty of 40*l.* for a falſe Return of a Burgeſs to ſerve in Parliament, (the Burgeſs himſelf

not ſuing within 3 Months,) he ſhall not be reputed a Common Informer. *R.* 4 *Mod.* 130. *Sho.* 354. 3 *Sal.* 200.

So upon the *St. of Tillage* 5 *El.* 2, The Informer ought not to ſue within 3 Years; for the 1ſt Year is given to him in Remainder, the 2d Year to the 2d in Remainder, the 3d to him in the Reverſion, and then the Informer (any more than the King) is not reſtrained to any Time. *Sav.* 6.

## (A. 2.) *Ex Officio.*

So an Information may be exhibitted *ex Officio* by the Maſter of the Crown Office, as Coroner and *Attornatus Domini Regis. Clift* 395. *R. Sho.* 106.

But the Clerk of the Crown ought not to ſet his Hand to an Information, without examining the Cauſe. *Sti. Pr. R.* 270.

And the Court will not compel him to file it. *Ray.* 482.

And now, by the *St.* 4 & 5 *W. & M.* 18. The Clerk of the Crown ſhall not, without expreſs Order by the Court, exhibit, receive, or file an Information, *&c.* before he have a Recognizance from the Perſon procuring it, to him againſt whom it is, in 20*l.* Penalty to proſecute effectually, and abide ſuch Orders as the Court ſhall direct.

Which Recognizance the Clerk of the Crown, or any Juſtice of Peace where the Cauſe of the Information ariſes, may take, and when taken or brought to the Office ſhall be entred on Record, and a *Memorandum* of it filed in an open Place of the Office, to which all may reſort without Fee.

And if the Defendant plead to Iſſue, and the Proſecutor do not at his own Coſts try it within a Year, or procure a *Nolle proſequi*, or a Verdict be againſt him, *B. R.* ſhall award the Defendant Coſts, unleſs the Judge at the Trial in open Court certify on Record, that there was a reaſonable Cauſe for the Information; for which Coſts, if not paid in 3 Months, the Defendant ſhall have the Benefit of the ſaid Recognizance.

*By the ſame Statute*, it is declared, That it ſhall extend only to Informations by the Maſter of the Crown Office.

And this Statute extends to an Information by the Coroner for any Miſdemeanor; as, to an Information in Nature of a *Quo Warranto. R.* 1 *Sal.* 376. *Carth.* 504.

And if any Information be filed before a Recognizance given, the whole Proceſs upon it ſhall be quaſhed. *R.* 1 *Sal.* 376. *Carth.* 504.

And after Recognizance, the Coſts ſhall be paid, if the Judge does not certify, *&c.* which ſhall be intended of a Certificate entred upon the *Poſtea. Per Holt, Comb.* 345.

The Court will not grant an Information for Perjury, where the Queſtion was ſuch as made the Party accuſe himſelf. 1 *Sal.* 374.

## (A. 3.) By a Common Informer.

*Vide Action by Qui tam, &c.* in *Action upon Statute*, (E. 1, 2.)

By the *St.* 18 *El.* 5. None ſhall ſue on a penal Statute but by Information, or Original. *Vide Action upon Statute*, (E. 1, 2.)

And therefore, an Action upon a penal Statute in *B. R.* by Bill is Error. *R. Cro. El.* 77.

And is not aided by the *St.* 18 *El.* 14. *R. Cro. El.* 77.

So, where a Statute gives a Penalty to the King and to him who will ſue for it; if the King has not exhibited an Information, any Common Informer may.

And the King afterwards cannot reſtrain him of a Moiety of the Penalty. *Sti. Pr. R.* 270.

And

And if there be an Information *Qui tam, &c.* tho' the Attorny General enters a *Nolle proſequi*, the Informer may proceed for his Part. *R.* 1 *Leo.* 119. *Cro. El.* 583.

So, if the King pardon. *Cro. El.* 583.

Otherwiſe, in an Information upon the *St.* 16 *R.* 2. for a *Præmunire*, by the Attorny General and the Informer; for there the Informer only ſues for Damages, which are only acceſſory to the Conviction. *R.* 3 *Leo.* 139.

So, if the Informer dies, the Attorny General may proceed for the King's Part. *R. Cro. El.* 583.

Or, if he releaſe, or will be nonſuited. *Cro. El.* 583.

Or, if the Informer lapſe his Year. *Sav.* 6.

But by the *St.* 18 *El.* 5. The Informer ſhall exhibit the Information in Perſon, and purſue by himſelf or Attorny, and not by Deputy.

So, *by the ſame Statute*, On an Information, the Officer, who receives it, ſhall make a Note of the Day, Month, and Year when exhibited, from which Time it ſhall be accounted of Record, and not before: But this extends not to Informations for Maintenance, Champerty, Buying of Titles, or Embracery, or by a Corporation, or other to whom a Penalty is ſpecially given, or by Officers who proceed *ex Officio*, or for Matters concerning their Offices.

By the *St.* 31 *El.* 5. An Information ſhall be by a Common Informer within one Year after the Offence, (unleſs on the Statute of Tillage) or if limited by a Statute to a ſhorter Time, then ſooner. *Vide Ante*, (A. 1.)

By the *St.* 31 *El.* 5. and 21 *Jac.* 4. The Information ſhall lay the Offence in the proper County, and if not proved, the Defendant ſhall be found Not Guilty; and ſhall not be in the Courts at *Weſtminſter*, where the Information may be before Juſtices of Aſſiſe, *Niſi prius, &c. Vide Ante*, (A. 1.)—*Action*, (N. 10.)

And by the *St.* 21 *Jac.* 4. ſhall not be received, till the Informer ſwear he believes the Offence committed within a Year in the ſame County; which Oath ſhall be entred on Record.

But the Oath of the Informer need not appear upon the Information. *R. Cro. Car.* 316.

By the *St.* 18 *El.* 5. If the Informer make Compoſition with the Defendant before or after Proceſs, or before or after Plea, or take Money of him without order of Court, or offend in ſuing out Proceſs, or by other Miſdemeanor, he ſhall be ſet in the Pillory, be ever diſabled to be an Informer, and forfeit 10*l.* a Moiety to the Queen, a Moiety to the Party grieved; of which Offences Juſtices of *Oyer* and *Terminer*, of Aſſiſe, and of the Peace at Quarter-Seſſions may inquire, *&c.*

By the *St.* 31 *El.* 5. None, for a Miſdemeanor prohibited to be an Informer by Order of Court, ſhall after be admitted to inform on any penal Statute, unleſs he be the Party grieved.

If an Informer compound an Information at the Quarter-ſeſſions, he ſhall be indicted for it, as an Offence within the *St.* 18 *El.* 5. *Adm.* 1 *Sid.* 311.

Though the Seſſions have not Conuſance of the Offence for which the Information is exhibited. *Semb.* 1 *Sid.* 311.

By the *St.* 18 *El.* 5. If the Informer delay or diſcontinue the Suit, be nonſuit, or have a Verdict againſt him, he ſhall pay Coſts; for which the Defendant may have a *Capias*, *Fieri facias*, or *Elegit*. *Vide Coſts*, (A. 6.)

But the Court will not oblige him to give Security for Coſts. *R.* 2 *Bul.* 18.

Nor grant an Information, where an Indictment is found for the ſame Offence, tho' inſufficient. 2 *Mod. Ca.* 187.

## (B) For what Offences it lies.

*Vide Indictment*, (D.)

AN Information lies by the Common Law for every Crime, which tends to the Subverſion of the State: As, for Blaſphemous Words; for Religion is the Cement of Society. *R.* 1 *Vent.* 293.

For Words which juſtify the Murder of *Charles* the 1ſt in Contempt of *W.* 3. tho' *Charles* the 1ſt was dead before. 3 *Sal.* 198.

So an Information lies, where a Man omits a Thing, which ſome Statute commands to be done, or does any Thing prohibited by Statute. 2 *Mod.* 302.

So, if by one Clauſe a Statute prohibits a Thing, and by another Clauſe gives a Penalty; an Information lies upon the prohibitory Clauſe. *Per Hale*, 2 *Mod.* 128.

So, if a Statute makes a Thing criminal which was lawful before, an Information lies for an Attempt to do it: As, where Going to *France* during a War, without Licence, is made High Treaſon by the *St.*—*W.* 3. an Attempt to go to *France* is a great Miſdemeanor, for which an Information lies. *R. Skin.* 637.

So, if an Officer neglects, or abuſes his Authority.

As, if a Juſtice of Peace commits to the Houſe of Correction, without proper Cauſe. 2 *Mod. Ca.* 45.

## (C) For what, not.

BUT where a Statute does not only make a Prohibition, but alſo makes a Nullity in the Act intended to be reſtrained, no Information is neceſſary: As, where the *St.* 18 *H.* 6. 11. prohibits any to be a Juſtice of Peace, who has not 40*l. per Annum*, *&c.* an Information is not neceſſary; for the Statute makes an Incapacity, and his Office is void. 2 *Mod.* 302.

So, upon the *St.* 5 & 6 *Ed.* 6. 16. which prohibits the Sale of Offices; for the Office is *ipſo facto* void. 2 *Mod.* 302.

## (D) Form of Proceeding.

### (D. 1.) Proceſs.

BY the *St.* 21 *Jac.* 4. The ſame Proceſs ſhall be in an Information, as in Treſpaſs at Common Law.

And therefore, Proceſs lies to an Outlawry. 4 *Inſt.* 172.

Yet upon an Outlawry, the Defendant cannot be fined; for an Outlawry for a Miſdemeanor does not amount to a Conviction for the Offence. *R. Sal.* 494.

So Proceſs to an Outlawry is intended by the *St.* 21 *Jac.* 4. in Popular Actions, or Informations before Juſtices of Aſſiſe, *Oyer* and *Terminer*, Peace, *&c.* 4 *Inſt.* 172.

So upon an Information in *B. R.* or *C. B.* a *Subpœna* lies. 3 *Leo.* 48. *Co. Ent.* 370. *R.* 1 *And.* 48.

So upon an Information in the *Exchequer* a *Subpœna* lies, and afterwards an Attachment, Proclamation, Commiſſion of Rebellion, and upon Motion a Serjeant at Arms, with the ſame Coſts for a Contempt as upon an *Engliſh* Bill. *Rules and Orders in the Exchequer*, *Rule* 51.

But by the *St.* 18 *El.* 5. No Proceſs ſhall go till an Information exhibited, (unleſs in Informations for Champerty, Maintenance, *&c.*)

And

And the Clerk ſhall indorſe on it the Name of the Proſecutor, and the penal Statute, on Pain of 40*s.* a Moiety to the Queen, a Moiety to the Party.

And by the *St.* 4 & 5 *W.* & *M.* 18. All Outlawries on Informations, except for Treaſon, or Felony, may be reverſed by Attorny, and without giving Bail, unleſs when it is ſpecially ordered by the Court.

By *Rules and Orders in Exchequer*, *Rule* 48. In an Information in the *Exchequer* upon Seiſure, *&c.* a ſhort Note of the Names of the Parties, the Quality of the Goods ſeiſed, and the Day in which the Information was exhibited, ſhall be entred in a Book of the Clerk of the Office, to be prepared for ſuch Intent.

So in an Information upon a penal Statute, there ſhall be an Entry of the Names of the Parties, and the Day of the Information. *Rules and Orders in the Exchequer*, *Rule* 48.

## (D. 2.) The Information ought to be certain.

An Information ought to be certain: And therefore, if an Information upon the *St.* 18 *H.* 6. 17. for ſelling a Pipe of Wine, which does not contain 126 Gallons, without a Defalcation of the Price for the Defect in the Meaſure, does not ſhew how much the Defect was, *viz.* a Pint, Quart, *&c.* it is not good. *R.* 2 *Leo.* 39. *Vide Indictment*, (G. 1, &c.)

If an Information againſt a Ferryman for Extortion be, that he took ſo much *de quibuſdam ignotis* between ſuch a Day and ſuch a Day, *pro quolibet equo*, without ſhewing the Certainty of what he carried, and at what Time, it is bad. *R.* 4 *Mod.* 102. *Sho.* 389. 3 *Sal.* 192, 201.

If an Information for a falſe Indorſement of *Exchequer* Bills ſays, *quod falſo indorſavit quaſi receptæ eſſent pro Cuſtumis*, it is bad; for it does not ſhew what was indorſed. *R.* 1 *Sal.* 375.

## (D. 3.) Ought to alledge the Offence according to the Words of the Statute, *&c.*

So an Information ought to alledge the Offence committed according to the Words of the Act, which are not ſupplied by the Words, *Contra formam Statuti:* As, an Information for importing Goods of a foreign Growth in a foreign Ship, *contra formam Statuti*, is not good, unleſs it ſays, that the Goods *belong to the Importer*; for then they are not forfeited. *R. Hard.* 20.

In an Information for grubbing up a Wood, without ſaying, that it was a Wood at the Time of the Statute. *R. Hard.* 105.

If it be by way of Recital, *quod cum*, without a poſitive Charge, it is bad. *Semb. Sho.* 337.

An Information for a Libel, *cujus Tenor ſequitur*, will be bad, if it varies in a Word. *Sal.* 660.

## (D. 4.) How the Information ſhall be quaſhed.

If an Information by a Common Informer be bad, yet it ſhall not be quaſhed upon Motion; for the Defendant ſhall have Coſts, if it be for him. 1 *Sid.* 152. *Vide Indictment*, (H.)

So an Information by the Attorny General for not repairing an Highway, where the Iſſue is upon the Right of repairing, ſhall not be quaſhed upon Motion, till it be tried who ought to repair. 1 *Sid.* 140.

Nor any Information by the Attorny General. 1 *Sal.* 372.

But an Information by the Attorny General, or Maſter of the Crown Office being *ex officio*, may be quaſhed by the Court upon Motion, if there be Cauſe. 1 *Sid.* 152.

## (D. 5) Imparlance, and Plea.

If the Defendant appears upon Recognizance, and Information is filed againſt him, he may imparl till the next Term. *R. Sho.* 56. 1 *Sal.* 367. *Cont.* 3 *Mod.* 215.

So, in every Caſe, where the Defendant appears upon the firſt Proceſs, he ſhall have an Imparlance of Courſe. 1 *Sal.* 367. To the next Term, if the Information lies in another County than *Middleſex*. *Sal.* 514.

If it lies in *Middleſex*, he ſhall have the whole Term to plead. *Sal.* 514.

So, in the *Exchequer* upon an Information, or *Quo Warranto*, except Informations of Seiſures, it is ſufficient if the Defendant, not being taken upon Proceſs, pleads in 4 Days of the next Term after his Appearance, and if he does not there ſhall be Judgment againſt him by *Nil dicit*. *Rules and Orders in the Exchequer*, *Rule* 50.

But where the Defendant appears upon an Attachment, he muſt plead *inſtanter*. *Per Holt*, 1 *Sal.* 367. 3 *Mod.* 215.

And in the *Exchequer*, if he be taken upon Proceſs of Contempt, he ſhall plead in 4 Days after Appearance. *Rules and Orders in the Exchequer*, *Rule* 50.

If he be outlawed upon an Information, and that be reverſed. *R.* 1 *Sal.* 371, 514..

Or comes into Court upon a *Cepi Corpus*; for then he was in Contempt. *Sal.* 514.

The Defendant to an Information may plead Not Guilty.

Or he may plead, a former Information depending for the ſame Cauſe. *Tho.* 6. *Win. Ent.* 537. *Hob.* 128. *Mo.* 864. *Vide Action*, (K. 2.)

By the *St.* 21 *Jac.* 4. In any Information, Action, *&c.* on a penal Statute, the Defendant may plead the General Iſſue Not Guilty, or *Nil debet*, and give the ſpecial Matter in Evidence.

If the Defendant plead and give Security to anſwer for the Goods ſeiſed, the Court in Diſcretion ſhall make Reſtitution, or not. *Hard.* 97.

## (D. 6.) Replication, *&c.*

If the Plaintiff reply to the Plea to an Information in the *Exchequer*, the Defendant ſhall rejoin within 4 Days, otherwiſe there ſhall be Judgment againſt him by *Nil dicit*. *Rules and Orders in the Exchequer*, *Rule* 53.

If the Plaintiff demur, the Defendant ſhall join within 6 Days, otherwiſe there ſhall be Judgment againſt him by *Nil dicit*. *Rules and Orders in the Exchequer*, *Rule* 52.

## (D. 7.) Trial, Judgment, *&c.*

By the *St.* 18 *El.* 5. No Jury ſhall be compelled to appeal at *Weſtminſter* on an Iſſue upon a penal Statute for an Offence committed 30 Miles diſtant, unleſs on the Back of the *Diſtringas* it be noted, to be at the Requeſt of the Attorny General, which ſhall be for reaſonable Cauſe ſhewn.

Notice of Trial in *London*, or *Middleſex*, ſhall be given 6 Days before the Trial. *Rules and Orders in the Exchequer*, *Rule* 55.

Notice of Trial at the Aſſiſes ſhall be given within 6 Days after the End of the Term. *Rules and Orders in the Exchequer*, *Rule* 55.

Judgment ſhall be entred upon a Rule given, in 4 Days after the Return of the *Poſtea*, within Term, upon Trials in *London*, or *Middleſex*, and in 4 Days after a Trial at Bar, if there are ſo many within the Term, otherwiſe upon the laſt Day of the Term. *Rules and Orders in the Exchequer*, *Rule* 56.

An Information being upon Seiſure of Goods, the Record of the Judgment and Fine upon it ſhall be finiſhed before the firſt Day of the next Term after the Recovery, to the Intent that the Fine be tranſmitted to the Pipe. *Rules and Orders in the Exchequer*, *Rule* 49.

The Clerk of Aſſiſe ought to return the *Poſtea* after Trial in an Information, or Action by *Qui tam*, to the proper Officer, who ſhall ſend a Note to the Clerk of the Eſtreats in the *Exchequer*, to the Intent that the Sheriff be charged with the Part of the Penalty due to the King. *Ray.* 479.

And if the Defendant does not appear after Conviction and ſubmit to a Fine, a *Capias pro Fine* goes.

If he be taken and give Security for his Fine, a *Superſedeas* goes. *Crompt. Juſt.* 213.

*Vide* more of *Information*, in *Action*, (K. 2.)—*Amendment*, (2 C. 2.)—*Gardian*, (H. 4.)—*Officer*, (K. 13.)—*Parliament*, (L. 12.)—*Prærogative*, (D. 72, &c.)—*Quo Warranto*, (C. 3.)

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*Vide Fine*, (G. 2.)—*Juſtices of Peace*, (B. 40, 41.)

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# INJUNCTION.

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# INMATES.

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## INNUENDO.

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# IRELAND.

## (A) A diſtinct Realm.

*IRELAND* is a Realm diſtinct from *England*. 4 *Inſt.* 349.

And therefore, Treaſon committed there ſhall be tried by the *St.* 33 *H.* 8. 23. made for the Trial of Treaſon done out of the Realm. 7 *Co.* 23. *a*, *Calvin*. 1 *And.* 262.

A Fine and Nonclaim does not bar him who was in *Ireland*. *Pl. Com.* 368. *b*.

But *Ireland* is Part of the Dominion of *England*, and cannot be ſevered without Act of Parliament here. *Vau.* 300.

(B) When

## (B) When bound by the Laws of England.

### (B. 1.) By Act of Parliament made here.

THE Subjects of *Ireland* are bound by the expreſs Words of the Parliament here: As, if a Statute ſpeaks of *Ireland* in expreſs Words. 4 *Inſt.* 350. *Adm.* 7 *Co.* 22. *b*, *Calvin. Vau.* 293. *per Ch. Juſt. and not denied by the other Juſtices.* 1 *H.* 7. 3. *a. R.* 1 *And.* 263. 1 *Rol.* 17. *Vide Poſt*, (B. 2.)

So Statutes made here have been ſent to be inrolled in *Ireland.* 4 *Inſt.* 351.

So a Perſon in *Ireland* may be naturalized by the Parliament here. *Vau.* 300.

And, being conquered, it is ſubject to the Parliament of *England. Vau.* 301.

So the Parliament of *England* has Power of Judicature for all Things done in *Ireland:* And therefore, ſhall try a Peer of *England* for Treaſon committed there. *Dy.* 360. *b. in Marg.*

Tho' he be alſo a Peer there; for being a Peer of *England* he cannot be tried in *Ireland. Dy.* 360. *in Marg.*

### (B. 2.) By other Laws here.

*H.* 2. commanded, upon Requeſt of the *Iriſh*, that his Laws in *England* ſhould be of force there. 4 *Inſt.* 349.

5 *Ed.* 1. the ſame Command. *Ry. F. 2d Vol.* 78.

So *H.* 3. ſent thither the Charter of King *John* and commanded, *Quod leges illas teneant & obſervent.* 4 *Inſt.* 350. 7 *Co.* 23. *a.* 2 *Bul.* 163. 1 *Rol.* 17.

And *Anno* 30 *H.* 3. Reciting, *quod tempore Johannis proviſum fuit, quod omnes leges & conſuetudines in Angliâ teneantur in Hiberniâ, & eadem terra eiſdem legibus ſubjaceat*, The King grants, *quod omnia brevia quæ currunt in Angliâ ſimiliter currant in Hiberniâ.* 4 *Inſt.* 350. *Vau.* 294, 296. *Pal.* 458.

By the *St.* 10 *H.* 7. 22. *in Ireland*, all Statutes late made in *England* concerning the Common Weal of the ſame ſhall be uſed, *&c.* in *Ireland* in all Points according to the Tenor of the ſame. 4 *Inſt.* 351.

And therefore, all Statutes made in *England* before 10 *H.* 7. are of force in *Ireland.* 12 *Co.* 111, 112. 4 *Inſt.* 351.

So the King, by Patent under the Great Seal of *England*, may confirm the Preſentee of a Church in *Ireland. Pal.* 459.

Or make a Diſpenſation to a Biſhop in *Ireland*, to hold a Church in *England in Commendam. R. Pal.* 458.

So a *Scire facias* in *Chancery* in *England* to repeal a Patent under the Great Seal of *Ireland*, is good. *Pal.* 459.

But Statutes made in *England* ſince 10 *H.* 7. 22. are not of force in *Ireland*, except where they extend to *Ireland* by expreſs Words. 12 *Co.* 112. 4 *Inſt.* 351.

And therefore, the Statutes of Jeofails do not extend to *Ireland*, farther than the Statutes there made warrant the Amendment. 2 *Rol.* 168.



(C) Parlia-

## (C) Parliament in Ireland.

IN the Time of *H.* 2. the Treatiſe *de modo tenendi Parliamentum* was tranſmitted by the King in a Roll to *Ireland*, for holding a Parliament there. 4 *Inſt.* 12.

And in the Time of King *John* a Parliament was held there. 4 *Inſt.* 349.

*Anno* 17 *Ed.* 3. The Parliaments in *Ireland* were regulated according to the Inſtitution of Parliaments here, and for the ſame End. 4 *Inſt.* 350, 1.

By *Poinings Act* 10 *H.* 7. 4. No Parliament ſhall be held in *Ireland*, but on the King's Lieutenant and Council there certifying, under the Great Seal of *Ireland*, the Cauſes for it, and the Acts to be paſſed, and that ſuch are expedient, and the King's Licence and Summons for a Parliament thereon. *Vide* 4 *Inſt.* 352. 12 *Co.* 110.

And by the *St.* 3 & 4 *Ph.* & *M.* 4. This may be, on Certificate by the Lord Deputy, Juſtices, or other Chief Governor. When the Cauſes and Acts ſent be approved as ſent, or with any Alterations. And the Parliament there holden may paſs the Acts ſo ſent, or any other that during the Parliament ſhall be ſent thence, and approved here, and tranſmitted thither from hence under the Great Seal of *England*. (*Vide* 12 *Co.* 110.)

And therefore, previous to a Parliament in *Ireland*, the Lieutenant, or other Chief Govenor and Council in *Ireland*, ought to certify to the King, under the Great Seal of *Ireland*, the Cauſes for the Parliament, and the Acts to be paſſed there. *R.* 12 *Co.* 110, 111. 2 *Ruſh.* 20.

And theſe Acts ought to be affirmed or altered, and tranſmitted under the Great Seal of *England*. *R.* 12 *Co.* 111. *Jon.* 189. 2 *Ruſh.* 20.

Then there ought to be a Licence under the Great Seal, and a Summons for the Parliament there. *R.* 12 *Co.* 111. 2 *Ruſh.* 20.

The Cauſes and Acts tranſmitted under the Great Seal of *Ireland*, ought to be kept in the *Chancery* here. 12 *Co.* 111.

If the Acts tranſmitted are affirmed without Alteration, they ought to be remitted after Inrolment in *Chancery*, under the Great Seal of *England*. 12 *Co.* 111.

So, if they are altered, the Alteration need not be made in the Tranſcript from *Ireland*, which remains here; but the Act altered ſhall be inrolled in *Chancery*, and remitted under the Great Seal of *England*. 12 *Co.* 111.

So, after a Parliament begun there, any Acts may be tranſmitted from *Ireland*, and being approved or altered, remitted in the ſame Manner under the Great Seal of *England*. 12 *Co.* 111.

And therefore, if the Lieutenant ſummon a Parliament of himſelf, without Licence under the Great Seal, upon a Certificate under the Great Seal of *Ireland*, tho' he has Authority by his Commiſſion to do it, all Proceedings upon it are void. 2 *Ruſh.* 20.

The Parliament in *Ireland* try a Peer of *Ireland* for High Treaſon or Felony committed there, by his Peers. *Dy.* 360. *b.*

And he ſhall not be tried by the *St.* 26 *H.* 8. 13. 32 *H.* 8. 4. 35 *H.* 8. 2. or 5 *Ed.* 6. 11. for he cannot be tried by a Jury, nor here by his Peers. *R. Dy.* 360. *b.*

(D) Grant

## (D) Grant by the King concerning Ireland.

SO the King, by a Grant to a Borough in *Ireland*, may enable them to elect Members of Parliament there.

And a Grant to a Part of a Corporation to elect veſts the Intereſt in the whole Corporation. *Hob.* 14.

So he may make the Grant to a Borough not Corporate. *R. Hob.* 15.

## (E) Creation of Biſhops there.

SO the King by Letters Patent creates a Biſhop there. 2 *Rol.* 130. *Vide Eccleſiaſtical Perſons*, (C. 2.)

And a Patent to an Archbiſhop to make a Conſecration, by which it is ſaid, *Eligimus, Creamus, &c. A. Epiſcopum de B.* is ſufficient, tho' it is not directed to *A.* himſelf. *R.* 2 *Rol.* 101, 130.

And if the King writes to the Lieutenant and 3 others there, to take Order that *A.* be made a Biſhop, and 3 of them are removed before the Coming of the Letter, and the other makes ſuch a Patent; it is ſufficient: for the King's Letter is only directory to his Council there. *R.* 2 *Rol.* 101, 130.

So the King may make a Biſhop of *Ireland* by Patent under the Great Seal of *England*, as well as under the Great Seal of *Ireland*. *Pal.* 459.

But if a Biſhop be named and inveſted and inſtalled to the Biſhoprick, the former Biſhop being alive and not deprived, his Nomination and Inveſtiture is void. *R.* 2 *Rol.* 131.

And tho' the former Biſhop afterwards die, the 2d Biſhop is not made lawful Biſhop. *R.* 2 *Rol.* 131.

## (F) Uſage there conſidered in Judgments.

CONSIDERATION ſhall be had of the Uſage there, in the Examination of Judgments in *Ireland:* And therefore, if a *Venire* be directed to the Sheriff of a foreign County for Trial in an Ejectment there, without any Cauſe alledged, it ſhall be good, being certified to be the uſual Courſe there. *R.* 2 *Rol.* 166.

So an Ejectment lies of ſo many Acres of *Mountain*, if it be Land known there. *Semb.* 2 *Rol.* 167.

## (G) Remedy in England.

### By Error, Appeal, &c.

A Writ of Error lies in *B. R.* in *England*, upon a Judgment given in *B. R.* in *Ireland*. *Cro. Car.* 511. 2 *Bul.* 163. 1 *Rol.* 17. *Carth.* 460. *Vide Pleader*, (3 B. 3.)

And if the Judgment be reverſed, a Writ ſhall be directed to the Chief Juſtice there, to award Execution. *R. Cro. Car.* 512.

So an Appeal lies to the Delegates in *England*, upon a Sentence given by the Eccleſiaſtical Court in *Ireland*. *Cro. Car.* 264.

So an Appeal to the Parliament of *England*, upon a Judgment in *Ireland* affirmed by the Parliament of *Ireland* lies, tho' *B. R.* cannot correct it, as it ſeems. 1 *Sho.* 559. *Vide Pleader*, (3 B. 6.)

So an Appeal lies to the Houſe of Peers in *England*, upon a Decree in *Chancery* in *Ireland*, and not to the Parliament there. *Ca. Parl.* 83. *Vide Parliament*, (L. 7.)

So Remedy lies in the *Chancery* in *England*, for a Breach of Truſt, &c. touching Lands in *Ireland*. 1 *Ver.* 419. *Vide Chancery*, (3 X.—4 W. 27.)

So an Action lies here, upon a Perſonal Contract touching Lands in *Ireland*: As, upon an Obligation, or Covenant to grant a Rent out of Land in *Ireland*. 1 *Ver.* 419.

So, upon a Contract made there: As, upon an Obligation, or Covenant given in *Ireland*. 1 *Ver.* 419.

So a *Scire facias* lies in the *Chancery* here, for repealing a Patent in *Ireland*. 1 *Ver.* 419.

So the Judges in *England* are the proper Expoſitors of Laws made in *Ireland*. *R.* 1 *Ver.* 421, 422. 1 *And.* 102, 103.

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*Note*, in Page 338, the Reference from *Felo de ſe* is to *Juſtices*, (M. 3.)

FH
MVSEVM
BRITANNICVM

*The* END *of the* THIRD VOLUME.

Z 772
M S S R V M
RIPARIANORVM